



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



In the matter of:)	
)	
)	ISCR Case No. 23-00905
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2024

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On May 2, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 on June 8, 2017.

Applicant answered the SOR on May 28, 2023, and he requested a hearing. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 7, 2023, and the hearing was convened as scheduled on December 13, 2023. The Government offered exhibits (GE) 1-5, which were admitted into evidence without objection. The Government’s exhibit list was identified as hearing exhibit (HE) I

and its disclosure letter to Applicant was marked as HE II. Applicant testified but did not offer any documents into evidence. DOHA received the hearing transcript (Tr.) on December 26, 2023.

Findings of Fact

In his SOR answer, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b, with explanations. He denied the allegation in SOR ¶ 1.c. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He began working at his present job in approximately June 2022. He works as a software engineer. He has a bachelor's degree, as well as a law degree. He married in 1997 and has a 12-year child. His wife is a structural engineer and runs her own business. (Tr. 6, 17, 23-24; GE 1-2)

The SOR alleged Applicant was delinquent on three accounts (a bank debt, a vendor debt, and rent from a lease agreement) totaling approximately \$21,600 (excluding the amount of the rent debt, which was unspecified). The debts are established by Applicant's admissions in his interrogatory responses from March 2023, his SOR admissions; and his hearing testimony. (SOR ¶¶ 1.a–1.c) (Tr. 27-29, 32-37; GE 2; SOR answer)

Applicant admitted all the SOR debts during his testimony. He also admitted that he has not made any voluntary payments toward any of the debts as of the date of the hearing. He stated that the reason for his financial difficulties was because he quit his position as a patent attorney, where he was dissatisfied with his work, and started a business in late 2019 that ultimately failed. He closed the business in approximately May to June 2022. These debts resulted from the business. (Tr. 22, 28-33; SOR answer)

While none of the debts appear on Applicant's credit report because they were business debts, he admitted signing a personal guarantee for each of the debts. He believed the business failed because he started it up right as the pandemic took hold in this country, which delayed his start date and his ability to get needed supplies. Besides the SOR debts, Applicant also used his personal finances to continue operating the business. He estimated that he suffered a total financial loss of approximately \$550,000 to keep the business operating. He decided he could not keep investing money into the business, so he closed it in 2022 and then was able to secure his position with his current employer as a software engineer. (Tr. 20-23, 28, 38)

Applicant admitted seeking advice from a bankruptcy attorney about the advisability of filing for bankruptcy protection because of these business debts. The attorney advised him to wait to see if the creditors sought recovery against him based upon his personal guarantees. If they did, then he could consider filing for bankruptcy protection. However, the creditors may choose to forgive the debts and it would be

unnecessary for Applicant to file bankruptcy. He chose to follow this advice. So far, the creditors have not sought enforcement of his personal guarantees for the business debts. He admitted that he currently does not have the funds to pay the debts. (Tr. 26-28)

The status of the three SOR debts is as follows:

SOR 1.a-bank debt-\$17,000. Applicant admitted this debt. The debt was originally approximately \$30,000, but when he was hired for his current position his signing bonus of approximately \$13,000 was deposited into his bank account and his bank diverted those funds toward his unpaid loan account. Other than that involuntary payment, he has not made any further payments on this account. (Tr. 30-32; SOR Answer)

SOR 1.b-vendor debt-\$4,600. Applicant admitted this debt was for unpaid supplies and materials from one of the vendors with whom he did business. He has not made any payments toward this debt since closing his business. (Tr. 33; SOR answer)

SOR 1.c-unexpired lease debt-unspecified amount. Applicant explained that this debt resulted from the agreement he signed with his landlord to rent the space for his business location. In February 2020, he signed a ten-year lease with a monthly rent of \$4,000. He made those payments through late 2021 or early 2022. In May 2022, he and his landlord agreed to a lease termination. The landlord has not sought other legal recourse against Applicant. This debt is resolved. (Tr. 29, 33, 36; SOR answer-attachment to answer)

Applicant's current finances shows that he has approximately \$860 as a monthly residual after paying his current expenses and servicing his non-SOR debts, which include two mortgages (balances of \$347,657 and \$51,2370); student loans (balance of \$17,522); two auto loans (balances of \$14,175 and \$10,182); and three credit cards (balances of \$22,665; \$47,327; and \$3,162). He listed his assets, including his home, valued at \$854,000; his wife's retirement accounts, valued at \$600,000; his wife's business, valued at \$200,000; and savings of \$2,000. He had not approached his wife about using her retirement funds to pay the business debts. He presented no evidence of financial counseling, other than his discussion with his bankruptcy attorney. (Tr. 39-41; GE 2, pp. 12-13 (Personal Financial Statement))

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 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.

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 about 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

AG ¶ 18 expresses the security concern for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant accumulated three delinquent debts, two of which remain unpaid or unresolved. He made a conscious decision not to file for bankruptcy and wait to see if the creditors would forgive his debts. I find all of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Applicant's debts are recent and he admitted that, aside from resolving the lease debt, he has not voluntarily paid or attempted to resolve them. He made a conscious choice not to address his delinquent debts, rather he decided to see if the creditors

would forgive them and he could avoid bankruptcy. While this decision may be a sound financial decision, it does nothing to show his reliability, trustworthiness, and good judgment for security worthiness purposes. AG ¶ 20(a) is not applicable.

Applicant's decision to change career paths and start a new business just before the effects of the 2020 pandemic was partially a condition beyond his control. However, by failing to address his SOR debts after closing the business he has not acted responsibly. He admittedly weighed the benefit of pursuing bankruptcy but decided against this action. His bank involuntarily captured his signing bonus of \$13,000 and applied it to his debt with the bank. He also negotiated a termination agreement with his landlord. Other than these actions, he pursued no other payment options with the creditors. AG ¶ 20(b) is not fully applicable.

Aside from his contact with a bankruptcy attorney, Applicant did not present evidence of financial counseling. He failed to establish good-faith efforts to resolve his debts. The involuntary capture of funds by his bank applied to his business loan does not meet the test of good faith. Given the unpaid status of his debts and the lack of a responsible plan to resolve them, Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do not apply, except as to SOR ¶ 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude 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:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge