



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



In the matter of:)	
)	
)	ISCR Case No. 22-02546
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent and unpaid debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 3, 2021. On February 13, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant answered the SOR on an unknown date and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2023.

The hearing convened on January 18, 2024. Department Counsel submitted Government Exhibits (GE) 1-4, which were admitted in evidence without objection. Applicant did not provide any documentation at the hearing. I held the record open for two weeks after the hearing to provide Applicant with the opportunity to submit documentary evidence. He submitted Applicant Exhibits (AE) A-E, which were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted all of the SOR allegations (§§ 1.a-1.j). In his answer, he stated that he did not know he was responsible to repay debt that had dropped off his credit report. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 44 years old. Since 2022, he has worked overseas as a data entry technician for a government contractor. He was married in 2004, but he and his wife have been estranged and lived apart since 2016. He has three children, one who is still a minor. He took two years of college classes but did not earn a degree. He served on active duty in the Army from 2004-2007. He deployed to Iraq for seven months. He served in the Army National Guard from 2007-2008 and had one deployment to Kuwait. After leaving the military he worked for a government contractor overseas, including in Kuwait for 13 months, and in Iraq for 18 months. He was earning about \$108,000 annually during this employment. (Tr. 16-49; GE 1)

After his overseas contract ended in about December 2011, Applicant was unable to find more contract work overseas. He drove a bus for six months, took care of his children when his wife worked, and was unemployed. He used credit cards to supplement his savings and did not receive unemployment benefits. From 2013-2015, he took college classes and had his tuition and housing expenses paid by the G.I. Bill. He estimated that he had about \$2,500 coming in monthly from the G.I. Bill and his Department of Veterans Affairs (VA) disability income. In 2016, he moved to State A and lived with his mother. (Tr. 23-49; GE 1)

From 2016-2021 he was unemployed but received about \$1,000 monthly of disability income from the VA. He used his VA disability income to fund lengthy overseas travel to South Africa. He claimed the cost of living there was low. He estimated that he took 11 trips to South Africa between 2018 and 2021. He did not make payments on his delinquent debt during this time. (Tr. 23-61)

The SOR alleges 10 delinquent debts totaling about \$59,632. The status of the allegations is as follows:

SOR ¶ 1.a is a credit-card account that has been charged off for \$14,746. The account was opened in 2018. Applicant used the credit card for personal expenses, including electronics, plane tickets, and clothes for his children. He stopped paying it in 2019. This debt is unresolved. (Tr. 30-49; GE 2, 3, 4)

SOR ¶ 1.b is a military exchange credit-card account that has been charged off for \$12,703. The account was opened in 2004. Applicant used it to purchase furnishings for his apartment in 2012. He made no payments from 2012 until 2023. He claimed he started making \$340 monthly payments in 2023. He provided documentation showing one payment in December 2023. The balance is listed as \$7,423. He provided no documentation showing a track record of payments on this debt. He reported that some

of his tax refunds have been applied to this debt. This debt is unresolved. (Tr. 30-49; AE B; GE 3, 4)

SOR ¶ 1.c is an auto loan that has been charged off for \$8,330. Applicant stated the car was repossessed in about 2015 because he was unable to afford it. He has not made any payments. This debt is unresolved. (Tr. 30-49; GE 3, 4)

SOR ¶ 1.d is a credit-card account that has been placed for collection for \$7,711. Applicant was unsure of the origin of this debt or what the credit card was used for. He speculated that it could be related to SOR ¶ 1.j but provided no documentation supporting that assertion. He has not made any payments on this account. This debt is unresolved. (Tr. 30-49; GE 3, 4)

SOR ¶ 1.e is a credit-card account that has been placed for collection for \$1,294. Applicant does not know the origin of this debt and has not made any payments on this account. This debt is unresolved. (Tr. 30-49; GE 3, 4)

SOR ¶ 1.f is a credit-card account that has been charged off for \$781. Applicant does not know the origin of this debt and has not made any payments on this account. This debt is unresolved. (Tr. 30-49; GE 3, 4)

SOR ¶ 1.g is a credit-card account that has been charged off for \$587. Applicant stated that this is a retail credit card that he used to buy clothing. He has not made any payments. This debt is unresolved. (Tr. 30-49; GE 3, 4)

SOR ¶ 1.h is a credit-card account that has been placed for collection for \$5,776. Applicant does not know the origin of this debt and has not made any payments on this account. This debt is unresolved. (Tr. 30-49; GE 4)

SOR ¶ 1.i is a credit-card account that has been placed for collection for \$575. Applicant does not know the origin of this debt and has not made any payments on this account. This debt is unresolved. (Tr. 30-49; GE 4)

SOR ¶ 1.j is an account with a jewelry store that has been charged off for \$7,129. He has not made any payments. This debt is unresolved. (Tr. 30-49; GE 4)

Applicant reported earning about \$85,000 annually. His employer pays for his housing expenses overseas. The budget form he submitted included his estranged wife's salary. He testified that he did not know her income. The form also lists one debt payment for the debt alleged in SOR ¶ 1.b at almost double the amount he claimed in his testimony. Removing his estranged wife's income and adjusting the amount of this one debt payment, he has approximately \$871 left over monthly after expenses. He has about \$1,000 in savings. At the end of the hearing, Applicant reported he did not file income tax returns between 2012 and 2022. (Tr. 30-61; AE A)

After the hearing, Applicant submitted credit reports from December 2023 and January 2024. The January 2024 credit report shows an account opened in September 2023 that has been placed for collection for \$14,746. This matches the debt amount in ¶ 1.a, but there is no indication on the credit report that it's the same debt. Applicant provided no explanation about it. (AE C, D)

Applicant submitted a professional character letter from someone who has known him for three years. She states that he is honest, trustworthy, gets along well with his coworkers, and is trying to get in a better financial position. (AE E)

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes 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.

The financial considerations security concerns are established by the credit reports and Applicant’s admissions. AG ¶¶ 19(a), and 19(c) apply.

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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts are being paid, are resolved, or became delinquent under circumstances that are unlikely to recur. His failure to pay these debts is both long-term and recent, as well as ongoing and unresolved. His behavior continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant failed to establish that his debts became delinquent from conditions beyond his control or that he acted responsibly under the circumstances.

AG ¶ 20(d) does not apply. Applicant did not provide sufficient evidence showing a good-faith effort to repay creditors or resolve debts, and he has not established any meaningful track record of debt payments.

AG ¶ 20(e) does not apply. Applicant did not provide sufficient documentation to establish a reasonable basis to dispute the legitimacy of past-due debts or evidence of actions to resolve the issue.

At the hearing, Applicant disclosed that he has not filed income tax returns from 2012-2022. Although this tax issue was not alleged in the SOR, it is relevant in considering the potential applicability of the financial consideration mitigating conditions.

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 considered his character letter. I have incorporated my comments under Guidelines F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate the security concerns under Guideline F arising from his delinquent and unpaid debts.

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.j:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge