



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



In the matter of:)	
)	
)	ISCR Case No. 22-02334
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant failed mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 21, 2021. On December 9, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on January 13, 2023, with a narrative explanation and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On February 15, 2023, Department Counsel submitted the Government’s file of relevant material (FORM), including Items 1-5. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on March 1, 2023 and did not provide a response. The case was assigned to me on June 1, 2023. Items 1 and 2 are the SOR and Applicant’s Answer, which are the pleadings in the case. Items 3-5 are admitted without objection.

On June 14, 2023, I reopened the record for one week to give Applicant the opportunity to provide documentation. He provided a short narrative explanation on June 28, 2023. He then sent another piece of documentation on July 17, 2023. Despite both items being submitted past the deadline, I marked them as Applicant's exhibits A and B, and admitted them without objection.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a-1.f, and denied SOR ¶¶ 1.g and 1.h. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 45 years old. He graduated high school in 1996. He married in 2003, and has three children, two of which are minors. He has worked as project manager for his current employer since September 2020. He served on active duty in the Army from 1996 to 2017, when he retired from service. He had multiple deployments to combat zones during his time of service. (Answer; Item 3)

In August 2019, Applicant had surgery, followed by seizures, and he was unable to work. He was unemployed for a total 15 months. He stated that he only received one month of short-term disability, and then he was terminated by his employer. (Answer; Items 3, 4; AE A)

The 15-month period of unemployment put a strain on Applicant's finances. His wife does not work, and he is the sole income earner of their family. He reported that he was able to use his military retirement and disability earnings to sustain their basic living expenses, but he fell behind on his other expenses. Applicant stated that he had not been delinquent on paying any of his debts prior to his 15-month period of unemployment, and that he does not live beyond his means. He reported that he had credit counseling. (Answer; Items 3, 4; AE A)

The SOR alleges eight delinquent debts totaling \$91,873. The status of the debts is as follows:

SOR ¶ 1.a is an auto loan that was charged off for \$30,124. Applicant stated that his car was totaled during a medical emergency, and his auto-insurance rejected the claim because he had a lapse in payments on his policy. He claimed to have had contact with the creditor, and intends to pay, but this account is not resolved. (Answer; Items 3, 4, 5; AE A)

SOR ¶ 1.b is an auto loan that was charged off for \$24,452. In his 2022 background interview with a government investigator, Applicant stated that this auto loan was for a car that he had already paid. He asserted that he never missed a payment on the loan. However, in his 2023 Answer and recent submission of documentation, he admits responsibility for the debt without further explanation. He claimed to have had contact

with the creditor, and intends to pay, but this account is not resolved. (Answer; Items 3, 4, 5; AE A)

SOR ¶ 1.c is a credit card that was charged off for \$9,542. Applicant reported that he is making payments, has paid 55% of the debt, and that it will be paid by February 2024. However, he failed to provide any documentation showing a record of payments or the status of the account. (Answer; Items 3, 4, 5; AE A)

SOR ¶ 1.d is a credit card that was charged off for \$8,541. Applicant provided documentation showing that this account was resolved as of June 26, 2023. (Item 5; AE A, B)

SOR ¶ 1.e is a credit card that was charged off for \$8,029. Applicant claimed to have had contact with the creditor, and intends to pay, but this account is not resolved. (Answer; Items 3, 4, 5; AE A)

SOR ¶ 1.f is a credit card that was placed for collection for \$7,838. Applicant claimed that he had contact with the creditor and arranged a payment plan, but reports that the creditor has not started the plan. He claimed that he has reached out to the creditor several times without success. He did not provide any documentation to support these assertions. (Answer; Items 3, 4, 5; AE A)

SOR ¶¶ 1.g and 1.h are medical debts in collection for \$2,351 and \$996, respectively. Applicant reported that he has Tricare medical insurance from his military service and believes that these are erroneous charges. He claimed that he reached out to the creditor and Tricare to resolve it, but he provided no supporting documentation. (Answer; Items 3, 4, 5; AE A)

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 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.

The SOR allegations evidencing Applicant's history of financial delinquencies are established by Applicant's admissions and the credit report in the record. 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;
- (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;
- (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 SOR debts, other than SOR ¶ 1.d, are resolved or being paid. He recently paid ¶ 1.d after the record reopened, which was delinquent even after he became

reemployed in 2020. Applicant also failed to provide sufficient documentation of his current financial situation, or evidence which might otherwise establish his ability to address his debts responsibly. His failure to pay his delinquent debt is recent, ongoing, and not isolated. His failure to meet his financial obligations continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. While his health issues and resulting unemployment were beyond his control, he failed to provide sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) does not apply. Applicant has not submitted sufficient documentation showing that he has received financial counseling from a legitimate and credible source, or that there are not clear indications that the problem is being resolved or is under control.

AG ¶ 20(d) only applies to SOR ¶ 1.d, which is now paid. Applicant did not provide sufficient documentation of payment arrangements, a record of debt payments, or resolution of any of the remaining SOR debts.

AG ¶ 20(e) does not apply. Applicant failed to provide sufficient documentation that he had a reasonable basis to dispute the legitimacy of any of the debts alleged, or that substantiates the basis for the dispute, or evidence of actions to resolve the issue.

In his 2022 background interview with a government investigator, Applicant was asked to provide documentation regarding his financial delinquencies after the interview, which he did not submit. He did not provide documentation along with his Answer to the SOR, and he did not provide a response after receiving the FORM. When the record reopened in this case, he was offered the opportunity to “submit documentation that shows that you paid off or are paying any of the debts alleged, and the current balance of the debts...” In response, he only provided a short narrative and one receipt regarding one of the eight accounts.

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 honorable military service. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of his delinquent debts under Guideline F. Eligibility for access to classified information is denied.

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.c:	Against Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e - 1.h:	Against Applicant

Conclusion

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.

Ross D. Hyams
Administrative Judge