



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



In the matter of:)	
)	
)	ISCR Case No. 22-00129
)	
Applicant for Security Clearance)	

Appearances

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

02/15/2024

Decision

HYAMS, Ross D., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 5, 2020. On March 22, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on July 30, 2022, and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2023.

The hearing convened, as scheduled, on September 27, 2023. Department Counsel submitted Government Exhibits (GE) 1-3, which were admitted in evidence without objection. Applicant did not present any documentation at the hearing. After the hearing, I held the record open for two weeks to provide Applicant with the opportunity to submit documentary evidence. He submitted Applicant Exhibits (AE) A-I, which were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted all of the SOR allegations. 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 39 years old. He has worked as a cyber architect for a defense contractor since 2018. He earned a bachelor's degree in 2016 and two master's degrees in 2020 and 2022. He married in 2005 and has three minor children. (Tr. 16-18; GE 1)

In 2014, Applicant was motivated to finish his college education and change career directions. He had good credit at the time, and opened multiple lines of credit with the belief that his financial situation would greatly improve in the coming years. He admitted that he started spending frivolously and living beyond his means. While his income improved, it was not enough to sustain his lifestyle, and the debts went unpaid. (Tr. 20-24; GE 2)

In Applicant's April 2020 background interview with a government investigator, he disclosed he did not intend to pay his accumulated unsecured debts. Instead, he planned to weather the storm as the collections and lawsuits came in over the next several years. He admitted he made poor decisions with his finances but that he was at peace with his decision to not pay what he owes. (GE 2 at page 8)

Over time, several creditors sued him to collect the debts, and Applicant testified he paid them because of those lawsuits. However, he did not provide documentation of these payments. He admitted he was irresponsible with his finances for no good reason. (Tr. 20-24)

At the hearing, Applicant testified he resolved most of the SOR debts within the last month. He stated that he and his wife took out a \$95,000 home equity loan to do home improvements, and he used a significant portion to settle the SOR debts. He admitted that the outstanding balance from the debts was not actually paid off; rather it was moved from multiple creditors to the home equity loan lender. He admitted that he did not attempt to settle these debts at an earlier date. He did not have the liquidity to make settlement offers, because he spent almost all the money that he earned every month living beyond his means. (Tr. 20-24, 33-39)

Applicant reported that in 2018, he started making about \$130,000 annually with his current employer, and that he has made \$160,000 for the last two years. He has about \$8,000 in savings left after the home equity loan expenditures. He has about \$140,000 in his retirement account, from saving 8% of his yearly income. He has not had credit counseling and he did not provide a monthly budget. (Tr. 24-39)

The SOR alleges 14 delinquent debts totaling \$127,512. The status of the allegations is as follows:

SOR ¶ 1.a is an account placed for collection for \$34,366. Applicant admitted this debt and claimed that it was the same debt as in ¶ 1.m, but did not provide documentation supporting this claim. He provided an unsigned settlement agreement for this debt, but did not provide proof of payment. This debt is unresolved. (Answer; GE 3; AE B)

SOR ¶¶ 1.b and 1.c are credit card accounts placed for collection for \$18,679 and \$17,983, respectively. Applicant admitted these debts and provided documentation showing that he made a settlement payment in August 2023 for less than half of the amounts owed. (Answer; GE 3; AE D, E, F, G)

SOR ¶ 1.d is an account placed for collection for \$4,182. Applicant admitted this debt but did not provide documentation showing that it was resolved. (Answer; GE 3)

SOR ¶¶ 1.e, 1.h, and 1.n are credit card accounts placed for collection for \$2,531, \$1,336, and \$4,989, respectively. Applicant admitted these debts and claimed that ¶¶ 1.e and 1.n had been resolved. However, he only provided a stipulation of settlement for ¶ 1.e, not proof of payment. These debts are not resolved. (Answer; GE 3; AE A)

SOR ¶ 1.f is an account placed for collection for \$2,119. Applicant admitted this debt and claimed that it was the same debt as in ¶ 1.k but did not provide documentation supporting this claim. He provided a copy of a settlement agreement, but no documentation of payment. This debt is unresolved. (Answer; GE 3; AE H)

SOR ¶ 1.g is an account placed for collection for \$1,930. Applicant admitted this debt and claimed that it was resolved. He also claimed that it was the same debt as in ¶ 1.l but did not provide documentation supporting this claim. He provided a stipulation for a settlement agreement, but no proof of payment. This debt is unresolved. (Answer; GE 3; AE C)

SOR ¶ 1.i is a credit card account placed for collection for \$828. Applicant admitted this debt but did not provide documentation showing that it was resolved. (Answer; GE 3)

SOR ¶ 1.j is an account placed for collection for \$395. Applicant admitted this debt but did not provide documentation showing that it was resolved. (Answer; GE 3)

SOR ¶ 1.k is an account placed for collection for \$1,426. Applicant admitted this debt and claimed that it was the same debt as in ¶ 1.f. He did not provide documentation supporting this claim or showing that it was resolved. (Answer; GE 3)

SOR ¶ 1.l is an account placed for collection for \$2,382. Applicant admitted this debt and claimed that it was resolved but did not provide supporting documentation. (Answer; GE 3)

SOR ¶ 1.m is an account placed for collection for \$34,366. Applicant admitted this debt and claimed that it was the same debt as in ¶ 1.a. He did not provide documentation supporting this claim or showing that it was resolved. (Answer; GE 3)

Applicant submitted documentation of another settlement agreement for \$3,075 for an unalleged account, however he did not provide documentation of payment. (AE I) The unalleged debt may not be an independent basis for revoking Applicant's clearance, but I may consider it to evaluate Applicant's credibility; to evaluate his evidence of extenuation, mitigation, or changed circumstances; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for the whole person analysis. I have considered this unalleged debt for these limited purposes.

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 two 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 debts alleged in the SOR are established by the credit report 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; and

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

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts, other than ¶¶ 1.b and 1.c are being paid, are resolved, or became delinquent under such circumstances that are unlikely to recur. The two paid debts were settled about a month before the hearing and over a year after receiving the SOR, which is not mitigating. His failure to pay these debts is both long-term and recent, as well as ongoing and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant failed to provide sufficient evidence showing that these debts resulted 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 overdue creditors or otherwise resolve debts, and he has not established any meaningful track record of debt payments.

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 about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate the security concerns under Guideline F arising out of his delinquent 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.n:	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