



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



In the matter of:)	
)	
)	ISCR Case No. 21-02079
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 14, 2020. On October 18, 2021, 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) and Guideline E (personal conduct). He responded to the SOR on February 28, 2022, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record in lieu of a hearing.

On October 14, 2022, Department Counsel submitted the Government's file of relevant material (FORM) including Items 1-13. 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 October 31, 2022, and did not submit a response.

The case was assigned to me on January 26, 2023. On June 7, 2023, I reopened the record for one week to give Applicant the opportunity to provide documentation

showing that he paid or is paying any of the alleged debts. He submitted three credit reports and an explanation that I marked as Applicant's Exhibits (AE) A-D. Items 1 and 2 are the SOR and Applicant's Answer, which are the pleadings in the case. Items 3-13 and AE A-D are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted all the Guideline F allegations (SOR ¶¶ 1.a-1.i), and denied the Guideline E allegations (SOR ¶¶ 2.a-2.b). 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 53 years old. He was married in 2003 and has four adult children. He has worked as a cyber systems engineer since 2020. He was voluntarily unemployed for about five months in 2019, so that he could move and take care of a sick relative. He has otherwise been employed since 2007. (Items 3, 4)

In his SOR Answer, Applicant stated that his financial problems originated when his disabled wife was ill, and he was focused on her health. He stated that during this time he lost his job, his mother-in-law passed away, and that they took care of his father-in-law, who had cancer and depression. He did not specify what time period that these events occurred. He stated that when he became reemployed, he was earning less than in his previous job. In February 2022, he stated that he was focused on cleaning up his credit, and that his delinquent student loans were his first priority. He claimed that he brought his student loans current, which are not alleged in the SOR, and that he was working to resolve his other delinquent debts. He reported that his goal was to have his delinquent debts resolved by the end of 2022. (Item 2)

In his Answer, Applicant addressed the falsification allegations by asserting that he thought that he only had to update the information on his SCA if there had been a change. He stated that after his 2017 SCA, he was granted a security clearance in 2019. Since his 2020 SCA had been completed about a year after receiving his clearance, and his financial situation was the same, he claimed that he did not think that he needed to report it again. However, he did not report any financial delinquencies in his June 2017 SCA, and he failed to report any in his May 2020 SCA. He stated in his Answer that he was not aware that financial issues had been left off his SCA. (Answer; Items 2, 3, 4)

In his March 2018 background interview with a government investigator, he voluntarily disclosed his delinquent student loans, a temporary vehicle repossession in 2017, a short sale of his home in 2017, a charged-off credit card, and medical bills in collection. He was confronted with other delinquent debts. He claims that he did not report these debts on his 2017 SCA because of an oversight. He also reported in this interview that 2012 was when his wife's illness started to impact their finances, and that he hoped to resolve his financial delinquencies by the end of 2018. (Item 7)

In his April 2019 background interview, Applicant stated that his financial situation was getting better, but that his wife's medical expenses still impacted his ability to pay

debt. Documentation showing that he was in the process of resolving his delinquent debt was requested, but he did not provide any to the investigator. (Item 6)

In his July 2020 background interview, he did not voluntarily disclose any financial delinquencies, and was confronted by the investigator about his delinquent debt. He claimed that he did not list any debts on his 2020 SCA because of an oversight. He claimed that his financial situation was good and that he was slowly paying off his delinquent debt. (Item 5)

The SOR alleges nine delinquent debts totaling about \$19,000 and two SCA falsification allegations. The debt includes about \$15,800 of charged-off consumer debt, \$2,400 of debt in collection, and \$500 of medical debt in collection. The SOR also alleges falsification of his 2017 and 2020 SCA. The status of the allegations are as follows:

SOR ¶ 1.a is an account that was charged off in May 2017 for \$12,346. Applicant reported that this account was used to purchase a motorcycle. He stated that when he had financial difficulties, he was unable to afford the payments. He claimed that the account had been charged off before he could resume payments. He did not provide any documentation showing that he has taken any action on this debt, and it remains unresolved. (Answer; Items 10, 11)

SOR ¶ 1.b is a credit card that was charged off in August 2016 for \$2,452. Applicant provided a receipt with his answer showing that this account was paid in September 2021. This debt is resolved. (Answer; Items 10, 11)

SOR ¶ 1.c a is a credit card that was charged off in July 2016 for \$985. In his Answer, Applicant claimed that he was working to resolve this debt by the end of 2021. He did not provide any documentation showing that he has taken any action on this debt, and it remains unresolved. (Answer; Items 10, 11)

SOR ¶¶ 1.d, 1.f, 1.g, and 1.h are medical accounts in collection totaling \$530. Applicant claimed that Medicare was supposed to pay 1.d, and that the others went to collection before he could resolve them. In his Answer, he stated that he would resolve these debts by the end of 2021. He did not provide any documentation showing that he has taken any action on these medical debts, and they remain unresolved. (Answer; Items 10, 11)

SOR ¶ 1.e is a utility account that has been placed for collection for \$171. The date of last activity on this account was February 2017. Applicant claimed that this was a cable bill, and when he moved, the new company was supposed to pay the transfer fees. In his Answer, he stated that he forgot about this debt but would pay it by the end of 2021. In June 2023, he claimed that he recently had paid this debt over the phone and did not have a receipt. (Answer; Items 10, 11)

SOR ¶ 1.i is a mortgage account from 2017 with an outstanding balance of \$2,096. Applicant claimed that he was not aware that there was a remaining balance on this account. In his Answer, he stated that he would reach out to the creditor to resolve the

debt. He did not provide any documentation showing that he has taken any action on this debt, and it remains unresolved. (Answer; Items 10, 11)

SOR ¶ 2.a alleges that Applicant falsified his May 2020 SCA by failing to report any of his delinquent debts in “Section 26 – Financial Record – Delinquency Involving Routine Accounts”. In his Answer, he denied the allegation, and stated that all of the debts were listed in his SCA for his most recent clearance application, so he believed that he did not need to address them again. The record shows that Applicant did not list any delinquent debts on his 2017 SCA, but he discussed them in his background interview. He volunteered the information in his 2018 interview. He did not volunteer any financial information in his 2020 interview and was confronted with the debts by the investigator.

SOR ¶ 2.b alleges that Applicant falsified his June 2017 SCA by failing to report any of his delinquent debts in “Section 26 – Financial Record – Delinquency Involving Routine Accounts”. In his Answer, he denied the allegation, and stated that all of the debts were listed in his SCA for his most recent clearance, so he believed that he did not need to address them again. There is no documentation in the record that Applicant had submitted an SCA or had a background investigation that was close in time and prior to 2017, where he could assert that he had previously reported this information to investigators. The record shows that he voluntarily provided information about his financial situation in his 2018 background interview before the investigator raised specific accounts.

In June 2023, I gave Applicant the chance to submit additional documentation showing that he has paid or is paying any of the debts alleged in the SOR. This documentation was not provided. Applicant submitted three credit reports (AE B-D), which show that he did not have any new financial delinquencies. He stated that these three credit reports show that he has worked to take care of negative items on the reports, and that most items were resolved by submitting disputes through the credit agencies. Applicant admitted all of the SOR debts, and he did not provide specific information about why he would dispute any of these debts with the credit reporting agencies. He did not state that he had paid any of these debts except for the debts alleged in SOR ¶¶ 1.b and 1.e. His recent credit reports also show that he purchased a \$53,000 automobile in May 2022. (AE A-D).

Applicant did not provide any other documentation concerning his current financial situation, such as his monthly income and expenses, and his assets. He did not provide evidence showing that he has received credit counseling or maintains a monthly budget. (Answer; AE A-D).

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
- (b) a history of not meeting financial obligations.

The SOR allegations evidencing Applicant's history of financial delinquencies are established by his admissions and the credit reports 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;
- (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 evidence showing that any of the SOR debts, other than SOR ¶¶ 1.b and 1.e, are resolved or being paid, or that they became delinquent under circumstances that are unlikely to recur. He recently paid ¶ 1.e after the record reopened, which had been delinquent since 2017. This late payment activity is not fully mitigating. 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) partially applies. While his wife's illness and medical expenses were beyond his control, he failed to provide sufficient evidence that he acted responsibly under the circumstances. He was also voluntarily unemployed for five months in 2019, which impacted his finances. AG ¶ 20(b) does not fully apply.

AG ¶ 20(d) partially applies. It applies to the debt alleged in SOR ¶ 1.b because Applicant resolved that debt in September 2021 prior to submitting his SCA. It does not apply to the debt alleged in SOR ¶ 1.e because his recent resolution of this long-standing debt does not constitute a good faith effort to repay the creditor. The timing of Applicant's repayment of delinquent debts, impact upon the degree to which the mitigating factors apply. See, ISCR Case No. 08-06058 at 3 (App. Bd. Sep. 21, 2009). Despite repeated assurances that he was resolving his delinquent debt, he did not provide sufficient documentation of payment arrangements, payments made, or resolution of any of the remaining SOR debts.

AG ¶ 20(e) does not apply. Applicant claims that he resolved his remaining debts through disputes with the credit reporting agencies. However, he did not provide sufficient documentation to substantiate the basis for the dispute, and he admitted all of the SOR debts in his Answer. He did not show that any of the SOR debts had been successfully challenged. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14- 03612 at 3 (App. Bd. Aug. 15, 2015). The absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate a history of financial difficulties or constitute evidence of financial reform or rehabilitation. ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

Guideline E, Personal Conduct

AG ¶ 15 details the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes...

I have considered the 2017 and 2020 SCA falsification allegations under AG ¶ 16 and the following is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

There is sufficient evidence in the record of a deliberate omission, concealment, or falsification of relevant facts from a personnel security questionnaire. AG ¶¶ 16 (a) applies.

I have considered the mitigating conditions under AG ¶ 17. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Although Applicant failed to provide information about his delinquent debts on his 2017 SCA, he did volunteer that information to the investigator in his 2018 background interview. In his 2020 SCA, he did not provide information about his delinquent debts on the SCA, and he did not volunteer that information to the investigator before being confronted with it. While he claimed in his Answer that he thought he did not need to include the information again on his 2020 SCA, he had not included it on his 2017 SCA either. This explanation is not credible. I find that his failure to report delinquent financial information in his 2020 SCA was a deliberate omission, concealment, or falsification of relevant facts. AG ¶ 17(a) only applies to ¶ 2.b .

AG ¶ 17(c) does not apply. Providing false or misleading information; or concealing or omitting information concerning relevant facts is not minor. There is insufficient evidence to find mitigation by the passage of time, the behavior is infrequent, or that it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, and good judgment.

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 Guidelines F and E in my whole-person analysis.

Applicant did not request a hearing, I did not have the opportunity to question him about his financial issues, his failure to report financial information on his 2017 and 2020 SCAs, or to assess his credibility by observing his demeanor. 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, and his falsification of his 2020 SCA under Guideline E.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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