



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



In the matter of:)	
)	
)	ISCR Case No. 23-00636
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On April 27, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 26, 2023 and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 29, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 22, 2023. His response was due on October 23, 2023, but he did not submit one. The case was assigned to me on January 4, 2024. The

Government's documents, identified as Items 1 through 5 in its FORM, are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant denied all of the SOR allegations, with the exception of SOR ¶¶ 1.i, 1.j, and 1.k, which he admitted. He is 42 years old and married. He attended college from February 2015 to December 2019, and he earned an associate degree in May 2017 and a bachelor's degree in December 2019. He served in the U.S. military from November 2000 to December 2011. As of his October 2022 security clearance application (SCA), he was working as a security officer for his employer, a DOD contractor. He has never held a security clearance. (Items 1, 2)

The SOR alleges that Applicant had ten delinquent consumer debts totaling \$38,971 (SOR ¶¶ 1.a-1.g, 1.i-1.k) and two medical accounts in collection, for \$514 and \$238, respectively (SOR ¶¶ 1.h, 1.l). The allegations are established by Applicant's admissions in his Answer, October 2022 SCA, November 2022 background interview with an authorized DOD investigator, and credit bureau reports from October 2022 and August 2023. (Items 1-5)

In his Answer, Applicant stated that he was disputing the debts that he denied because he had "no legal binding contract" with the creditors in SOR ¶¶ 1.a, 1.b, 1.d-1.h, and 1.l, and he was contesting the amount claimed by the creditor in SOR ¶ 1.c. He also stated that he was making payment arrangements to pay the three debts that he admitted. He did not provide proof of his efforts to dispute his debts, or of any attempts to negotiate payment arrangements to pay his debts. (Item 1)

During his background interview, however, Applicant acknowledged that the debts in SOR ¶¶ 1.a-1.g and 1.i-1.k were his. He indicated that he was unaware of the medical debts in SOR ¶¶ 1.h and 1.l, but he intended to contact the creditors to verify them. In 2016, he and his spouse opened the furniture store account in SOR ¶ 1.j, and it became delinquent in 2018 because of their inability to pay. In 2019, he opened the account in SOR ¶ 1.a to finance his purchase of a \$14,000 car at \$512 monthly for 36 months. He surrendered the car to the dealer in 2020 when he could no longer afford to make the car payment. Also in 2019, he opened the checking account in SOR ¶ 1.i, and the account became delinquent in 2020 due to overdraft and bank charges. (Item 3)

In 2021, Applicant hired an attorney for \$3,000 to assist him with claiming veterans' disability benefits. (SOR ¶ 1.b) Once he was awarded 100% disability benefits, the attorney increased his charges to which Applicant disagreed. Also in 2021, he opened a cellular service account (SOR ¶ 1.c). When he closed the account in 2022 because of poor service, he had an outstanding balance for the last month of service. (Item 3)

Applicant obtained the credit cards for the debts in SOR ¶¶ 1.d, 1.e, 1.f, 1.g, and 1.k between 2020 and 2022, to purchase clothes and shoes (SOR ¶ 1.e) and to build

his credit (SOR ¶¶ 1.d, 1.f, 1.g, 1.k). The accounts became delinquent because he could not afford to pay them. (Item 3)

Applicant stated in his SCA that he was unemployed from December 2011 to May 2016. He indicated during his background interview that he experienced financial difficulties after leaving the military because he did not have direction on employment and was unemployed. He did not list any subsequent periods of unemployment on his SCA. He listed that he worked part time for a package delivery company from May 2016 to August 2017, while attending college. He also listed that he left his employment in May 2018 after sustaining an injury for which his employer did not accommodate, but he listed that he immediately began working for another employer. He also indicated that he left that employment in August 2022 due to COVID, but he listed that he immediately began working as a security officer for his current employer. He acknowledged during his background interview that he lived beyond his means from 2011 to 2021. In 2021, he realized that he needed to address his financial issues in order to care for his family. (Items 2-3)

Applicant described his financial situation as a work in progress during his background interview. He indicated that he has enough money to pay his monthly expenses and his outstanding debts. He intends to meet his financial obligations. There is no evidence in the record that he received any financial counseling. (Item 3)

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 access to classified information 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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 pertaining to 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered as relevant AG ¶ 19(a), an “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant has a history of not paying his debts. AG ¶¶ 19(a) and 19(c) apply.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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.

Conditions beyond Applicant's control contributed to his delinquent debts. However, he also acknowledged that he lived beyond his means from 2011 to 2021. He failed to show that he acted responsibly under his circumstances. He has not provided documentation showing that he has made any effort to address his delinquent debts. There is no evidence that he has received credit counseling. There are not clear indications that his financial problems are being resolved or are under control. I find that Applicant's ongoing financial problems continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not established.

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 guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate 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.l:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge