



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



In the matter of:)	
)	
)	ISCR Case No. 23-02238
)	
Applicant for Security Clearance)	

Appearances

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

05/15/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On November 13, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 10, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 5, 2024. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant provided a response to the FORM. He submitted documents that are marked as Applicant's Exhibits (AE) A through E. There were no objections to any of the documents offered in evidence and all are admitted. The case was assigned to me on April 24, 2024.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated into the findings of facts. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He earned a bachelor's degree and a master's degree. He served in the military from 2003 to December 2015 when he was honorably discharged. He married in 2004 and divorced in 2006. He has a child from the marriage who is 18 years old. He completed a security clearance application (SCA) in November 2022. He reported his employment with his present employer, a federal contractor, beginning in November 2022. Before then he worked for a foreign employer overseas from May 2019 to November 2022. He was self-employed from January 2016 to May 2019. (Item 2)

Applicant disclosed on his SCA that he failed to file his 2020 and 2021 federal income tax returns because he was out of the country and due to the pandemic. He stated he intended to file both years' returns with his 2022 tax return. The SOR alleges Applicant failed to timely file his 2020, 2021, and 2022 federal income tax returns (§ 1.c). (Item 2)

Applicant explained in his SOR answer that due to the complexities of filing his tax returns while living overseas and with foreign income, he was waiting until he returned to the United States so he could utilize a tax expert's services. Before he could return, the COVID pandemic hit, and he was in a lockdown status in the foreign country where he worked. It is unknown when he returned to the United States, but he said he has been in and out of the country since 2022. He mistakenly believed that because he worked overseas, he had three to five years to file his tax returns. He did not provide evidence as to where he received this advice. He eventually acquired the services of a tax expert who assisted him in completing his 2022 federal income tax return on November 18, 2023. There is no indication he requested an extension for filing this return late. There is an automatic extension granted for citizens working overseas until June 15th of the year to file. (Item 1)

In Applicant's SOR answer, he said he had not yet filed his 2020 and 2021 tax returns because he was waiting for certain documents. In his FORM response, he provided tax returns for 2020 and 2021 that appear to show the returns were filed electronically on February 7, 2024. Although he did not provide a confirmation receipt that they were electronically filed, there is sufficient evidence to make this deduction. Applicant did not owe any federal income taxes for any of the tax years alleged. (Item 1; AE A-D)

Applicant also disclosed in his SCA the delinquent debt alleged in SOR ¶ 1.a (\$15,078). He stated the debt became delinquent in 2015 after he was discharged from the military, and he was pursuing a new career. He stated he was “in current negotiations with collection agency for pay off amount. I have made it known that I will pay whatever is agreed to close the account.” He did not disclose the delinquent debt in SOR ¶ 1.b (\$4,869).

I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes but may consider it in the application of mitigating conditions and in my whole-person analysis.

In his answer to the SOR, Applicant admitted both debts. He said he faithfully paid these accounts for ten years. When he was discharged from the military he struggled financially and defaulted on both debts in 2016. He had every intention of paying the debts, but he did not have enough money in savings to pay all his bills for the first six months after his discharge. He was working on his master’s degree, paying child support, and selling his house so he could liquidate his assets for cash. He was also waiting for his military severance package to be delivered. He was without a car for four months while it was being shipped back from his last assignment overseas. These things all impacted his finances. (Item 1)

Applicant further stated that he contacted both creditors when he received his severance package and the proceeds from the sale of his house, presumably in late 2016 or 2017. He said he was told by the creditors to wait until the accounts were sent to collection. The debt in SOR ¶ 1.b was charged off. He stated that because the debt is charged off there is no creditor to pay. He did not provide any evidence of efforts he may have made in the past seven years to resolve this debt with the original creditor. It remains on his credit reports from January 2023, September 2023, and December 2023. It is unresolved. (Items 1, 4, 5, 6)

The debt in SOR ¶ 1.a was eventually placed in collection. Applicant stated that this debt was not sent to a collection agency until 2022. He did not provide any information as to what he may have done to resolve this debt from 2016 to 2022 with the original creditor, other than wait. Based on statements he provided, he said he no longer was struggling financially and intended to resolve it. In his SOR answer, he said the collection agency had offered to settle the debt for \$6,000. He said he was waiting for a written promise from the collection agency that once he paid the amount, it would be removed from his credit report. He said he is waiting for a response. He made no mention in his FORM response of any further action or payment he has made toward resolving this debt. It remains on all three of his credit reports. It is not resolved. (Item 1)

In Applicant’s response to government interrogatories from August 2023, he provided the following statement regarding his financial difficulties.

I am currently working to have the credit card debt removed from my credit, as these defaults are 7 years past now. From 2019-2022, these debts were

on my record while I worked in [foreign country] and had no hindrance on my work or my allegiance to my home country USA. Nor would I ever take a bribe to clear my debts. (Item 3)

Applicant stated in his SOR answer that he is not financially stressed. He is not living beyond his means. He has put his daughter through private school and paid for special soccer coaches. He had a period of six months that he struggled financially in 2016, but he is financially stable and has recovered from his earlier problems. He said he has worked overseas and never shared or sold classified information and never will. He maintained that except for the period after he was discharged from the military, he has always been financially responsible. (Item 1)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline 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. 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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely file his 2020, 2021 and 2022 federal income tax returns. He incurred two large delinquent debts in 2016 during a six-month period when he experienced financial difficulty. Despite recovering from that period, he has not taken any action on one debt to resolve it and despite having a settlement offer from the other creditor he did not provide documentary evidence that he has accepted the agreement and is resolving it. He also indicated that because these debts are over seven years old, he is working to have them removed from his credit report, presumably due to a statute of limitations bar. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant provided evidence that his delinquent federal income tax returns for tax years 2020, 2021, and 2022 have been filed. He did not owe any taxes. Despite his failure to address his late tax filings in a timelier manner, he has now done so. AG ¶ 20(g) applies.

Applicant has not resolved his delinquent debts. They remain current and overdue. AG ¶ 20(a) does not apply. He attributed his financial problems to a time in 2016 after he was discharged from the military and was unemployed for a period; was waiting for his severance pay; had moved back from overseas and was without a vehicle; was waiting for the sale of his house to be completed; and he was paying child support. He was aware he had stopped paying the two debts alleged in the SOR and they were delinquent. These factors were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He stated after the six-month period of financial instability, he received his severance pay and had the proceeds from the sale of his house. He said he was told that there was nothing he could do regarding the charged-off debt (SOR ¶ 1.b) and he had to wait to resolve the larger debt until it went to collection. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about the specifics of his actions and whether he made any additional effort to resolve his delinquent debts or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

It does not appear Applicant has taken any significant action to resolve either debt. There is no indication that he contacted the creditor in SOR ¶ 1.b again to attempt to resolve the debt when it became clear it was a security concern. He said he had a settlement offer regarding the debt in SOR ¶ 1.a but wanted the creditor to make a promise it would be removed from his credit report before he agreed. He did not provide an update in his response to the FORM that he had paid the settlement or was resolving the debt. Applicant stated in his August 2023 response to government interrogatories, "I am currently working to have the credit card debt removed from my credit, as these defaults are 7 years past now." This is an indication that he does not intend to pay these debts. Both debts remain on his most current credit report. I find he has not acted responsibly. AG ¶ 20(b) has limited application.

There is no evidence Applicant received financial counseling or that there are clear indications the problem is being resolved. There is no evidence he has made a good-faith effort in the past years to resolve these debts. AG ¶¶ 20(c) and 20(d) do not apply.

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 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.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge