



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



In the matter of:)	
)	
)	ISCR Case No. 23-00340
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On June 6, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR on June 30, 2023 (Answer). He requested a hearing before an administrative judge. The case was assigned to me on December 5, 2023.

The hearing was originally scheduled for February 22, 2024, but Applicant requested a continuance that I granted for good cause. The hearing was convened as rescheduled on April 11, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 4 without objection. Applicant testified but did not present any documentary evidence. I received a transcript (Tr.) of the hearing on April 18, 2024.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom he has worked since early 2022. He worked full-time for his employer for a brief time but has only been able to work part-time since shortly after he received the SOR. He has never married but has been engaged since October 2023. He has no children. He earned an associate degree in 2011. (Tr. 16-23; GE 1, 4)

In the SOR, the Government alleged that Applicant had 21 delinquent debts totaling approximately \$44,000 (SOR ¶¶ 1.a through 1.u). These delinquencies consist of educational loans (SOR ¶¶ 1.a and 1.r), an insurance premium (SOR ¶ 1.b), a telecommunication debt (SOR ¶ 1.c), credit cards (SOR ¶¶ 1.d through 1.h, 1.j through 1.o, 1.q, 1.t, and 1.u), an automobile loan (SOR ¶ 1.p), and personal loans (SOR ¶ 1.i and 1.s). He admitted the SOR allegations except for the allegations in SOR ¶¶ 1.b, 1.e, 1.f, 1.p, and 1.r. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's credit reports. (SOR; Answer; GE 2-4)

Applicant became delinquent on most of the SOR debts in early 2019. After his delinquencies began, he had a payment arrangement on the debts in SOR ¶¶ 1.g, 1.h, 1.i, 1.k, and 1.l for a few months each between 2019 and 2021. However, he stopped making payments on those payment arrangements by 2021, because he could not afford them. He has not re-contacted those creditors to resolve those debts since he defaulted on his payment arrangements. He disputed the debt in SOR ¶ 1.a with a credit reporting agency because he thought he had timely canceled the loan. He did not dispute the debt with the creditor and provided no documentation regarding his dispute. He has not resolved or made payments on the other accounts listed in the SOR. (Tr. 16-26, 34-40; Answer; GE 2-4)

Applicant plans to attempt to resolve the SOR debts by filing bankruptcy. He has not decided between filing a petition in Chapter 13 bankruptcy or a petition in Chapter 7 bankruptcy, but he is leaning towards filing a Chapter 7 petition. He has consulted with an attorney but has not paid the attorney the \$2,500 retainer fee the attorney requires. Applicant will not be able to afford to pay this retainer fee until he finds full-time employment, for which he is currently looking. He has started working on the "booklet" that he needs to complete to file a bankruptcy petition. He has not taken the required financial counseling course. He last spoke with this attorney in January 2024. (Tr. 26-34, 40, 47)

Applicant's financial delinquencies were largely caused by his fiancée's health problems. In early 2019, she began suffering from a health condition that required her to be in the hospital on dialysis for weeks at a time, several times per year. In March 2022, he quit a steady, well-paying job to relocate so that he could live with her to help her while she was ill. He fell behind on the SOR debts and others when he lost his full-time job, and because he prioritized her expenses which consisted of maintaining a place to live. Since March 2022, except for a few months, he has not had full-time employment, but he has been searching for it. After the beginning of 2023, his fiancée's health has

been better and she has been able to work again. He and his fiancée share income and expenses. Since March 2022, he has earned \$20.52 per hour and works 22 hours per week. His fiancée earns about \$2,000 every two weeks in take-home pay. She also works another part-time job where she works 20 to 30 hours per week and earns \$18 per hour. He has about \$140 combined in three bank accounts. He claimed that he and his fiancée follow a written budget and have about \$200 in surplus funds at the end of each month, but they use part of that surplus for other expenses such as gas and food. (Tr. 16-23, 47-52; GE 4)

Applicant has one other debt that has become delinquent since he received the SOR. In 2020, he financed the purchase of a 2021 automobile. He put down \$2,000 in cash and his payments were \$900 per month. He became delinquent on this account in about February 2023, after he moved to live with his fiancée, and the vehicle was voluntarily repossessed. He owes about \$9,000 on this account. (Tr. 40-44)

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.

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.

Applicant had 21 delinquent SOR debts totaling about \$44,000. Many of those debts have been delinquent for several years. The above-referenced disqualifying conditions are established.

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.

While acknowledging that Applicant's delinquencies arose almost entirely due to circumstances that were beyond his control, he has not resolved any of his SOR debts. He has also become delinquent on another account that he opened after he was having financial difficulties because of his fiancée's illness. While he plans to file bankruptcy to resolve his delinquencies, because of his lack of adequate income, it is unclear when or if he will be able to do so. He has not received financial counseling. He disputed the debt in SOR ¶ 1.a with a credit reporting agency, but he did not dispute it with the creditor, and he did not provide any documentation to substantiate that he had appropriately cancelled the loan pursuant to its terms. His financial issues are ongoing, and he has not established a track record of financial responsibility. His lack of resolution of his delinquencies means he failed to show that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his debts. None of the mitigating conditions fully 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 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 have incorporated my comments under Guideline F in my whole-person analysis. I am sympathetic to Applicant and his fiancée for her serious health problems. However, I must still follow the Directive to determine security clearance eligibility, and I must resolve any doubts in favor of national security.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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.u:	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.

Benjamin R. Dorsey
Administrative Judge