



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



In the matter of:)	
)	
)	ISCR Case No. 24-00019
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2024

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On September 25, 2022, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 1, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the CAS was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant submitted his response to the SOR in an undated Answer and requested a hearing.

On March 4, 2024, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On March 8, 2024, DOHA issued a notice of Microsoft Teams Video Teleconference Hearing scheduling the hearing for April 5, 2024. The hearing was convened as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 5, which I admitted without objection. Applicant testified, did not call any witnesses, and did not offer any documentary evidence. I held the record open until April 19, 2024, to afford Applicant an opportunity to submit evidence. He timely submitted Applicant Exhibits (AE) A through C, which I admitted without objection. On April 19, 2024, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 36-year-old ammunition handler employed by a defense contractor since August 2022. He seeks a Secret security clearance, which is a requirement of his continued employment. (Tr. 9, 12-14; GE 1)

Applicant received his high school diploma in January 2007. He was awarded an associate degree in computer science and game design in January 2018. (Tr. 10-12; GE 1) Applicant served in the U.S. Army from February 2007 to August 2015 and was honorably discharged as a sergeant (pay grade E-5) His military occupation specialty code was 14S (avenger crewmember). He did not make any deployments while he was in the Army. (Tr. 14-15, 25; GE 1)

Applicant was married from November 2011 to October 2018. That marriage ended by divorce. He has an eight-year-old son from that marriage and pays \$691 in monthly child support to his former spouse by income withholding. Applicant is geographically far apart from his former spouse and son. He has not seen his son since he and his former spouse “split,” but does maintain telephone contact with him. Applicant has maintained a cohabitant relationship with his fiancée since June 2022. (Tr. 15-18, 25-26)

Financial Considerations

Applicant’s six delinquent SOR debts totaling approximately \$33,157 are established by his September 25, 2022 SF-86; his May 10, 2023 Response to DCSA Interrogatories; his January 23, 2023 Office of Personnel Management (OPM) Personal Subject Interview (PSI); his January 7, 2023; and February 27, 2024 credit reports; and his undated SOR Answer. (GE 1 - 5)

Applicant explained that his 2018 divorce was costly. Since his divorce, he has struggled to find steady employment and has experienced various stages of housing insecurity. After finding a job with a lumber company, he was furloughed during the COVID-19 epidemic. (Tr. 26-28) He relocated to his present location in October 2020 where he found employment with a department store distribution center until February 2022, and was unemployed from February 2022 to August 2022. (Tr. 28-31)

Applicant’s financial difficulties continued when he totaled his car in a December 2022 accident and “had to get money so that we could get a second car so that both of

us could go to work.” In August 2023, the Department of Veterans Affairs (VA) diagnosed Applicant with a heart ablation that required surgery. As a result of his surgery and recovery, he was out of work for a month. And lastly, he stated, “with the current situation where my paycheck was cut in half because I don’t have a Security Clearance, it’s just kind of adding up right now, Your Honor.” (Tr. 19-23) Applicant stated that his insurance covered “a good portion” of his car loss after it was totaled and added that he has pending litigation related to his car accident. (Tr. 20, 38-39)

Summarized, Applicant’s six SOR allegations are: (1.a) \$19,656 state child support office delinquent child support arrearage; (1.b) \$1,025 collection cell phone account owed to a creditor in interest; (1.c) \$934 collection account owed to a medical provider; (1.d) \$586 charged-off department store credit card; (1.e) \$95 insurance company collection account; and (1.f) \$12,861 credit union charged-off car loan/repossession. (SOR ¶¶ 1.a – 1.f; Tr. 35-38) Applicant denied SOR ¶ 1.a because he disagreed with the amount alleged, not that he had a child support arrearage. He admitted the remaining allegations. (SOR Answer; Tr. 18-19)

As a result of the financial difficulties discussed above, Applicant got behind on his child support payments. When he began his current job, he arranged to have his support payments debited directly from his pay because he wanted to ensure that his son received his child support in a timely manner. Before Applicant arrived at his current child support payment arrangement, he did make sporadic payments when he had the money to do so. (Tr. 23-24, 28-29, 31-35) Post-hearing, Applicant submitted documentation from the state responsible for collecting his son’s child support that he is making regular payments to them. His current balance as of April 5, 2024 is \$16,734. (AE A, AE B)

With regard to the remaining five debts, Applicant has not done anything to resolve them. He stated, “I’m currently waiting on the outcome of this to decide my next action for the future. I have a couple of plans waiting, but it kind of depends on what happens today.” (Tr. 35) SOR debts 1.b through 1.d and 1.f were incurred during his marriage. SOR debt 1.e was incurred more recently and relates to his December 2022 car accident. (Tr. 36-40)

To address his indebtedness, Applicant has sought the advice of a colleague who went through a similar Security Clearance process. (Tr. 40) Post-hearing, Applicant submitted a letter dated April 16, 2024, from a credit counseling service advising that Applicant was a client of theirs and they were working to address “potentially inaccurate items on (his) credit report.” (AE C) In short, Applicant’s plan to deal with his debt is to wait and see what the outcome of his Security Clearance hearing is, and if he has the funds, enroll in a debt resolution program. (Tr. 45) He has not participated in financial counseling. (Tr. 46-47)

As a fulltime employee, Applicant’s hourly salary is \$19.23. Before his pay cut, he received 15 hours of regular overtime every month. Applicant estimates his monthly take home pay was \$3,200. He explained, “\$3,200 – well, it goes \$3,200 for one paycheck, and it’s \$1,700 for the next paycheck because of the overtime that we get.”

(Tr. 40-41) Applicant further explained that after he received a pay cut because he does not have a clearance his net monthly pay was reduced to “\$1,200 to \$1,500” as of February 1, 2024. (Tr. 41-42) Applicant’s fiancé is a night shift manager at a truck stop gas station. Applicant estimates her monthly salary to be \$2,030. Applicant shares expenses with his fiancé. Their major monthly expenses are rent at \$1,300 (of which he pays \$800), a car payment at \$600, car insurance for both of their cars at \$530, cell phone with internet at \$129, propane at \$150 to \$300, and a water bill at \$90. Applicant stated that he and his fiancé are living paycheck to paycheck. As of his hearing date, Applicant and his fiancé had \$243 in their checking account. He has about \$2,100 in his retirement account and has no other assets. (Tr. 42-45)

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 AG ¶ 2, describing 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

Financial Considerations

AG ¶ 18 articulates the security concern for 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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Id. (internal citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” and “(c) a history of not meeting financial obligations.” The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of

mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

AG ¶ 20 lists five potential mitigating conditions:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant is able to receive credit under AG ¶ 20(b) for his efforts to pay his child support arrearage identified in SOR ¶ 1.a. However, no mitigating conditions fully apply

to the other SOR allegations. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed since August 2022 with his current employer, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his long-standing financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

While the debts alleged in the SOR arguably resulted in large part from circumstances beyond Applicant's control, that is only half of the analysis and Applicant's response to his financial problems must be the second consideration. Applicant was unable to submit sufficient evidence to supplement the record with relevant and material evidence to mitigate the financial security concerns. Apart from his child support arrearage debt, there is no evidence that he maintained contact with his creditors. He did not pursue financial counseling. His recent effort to contact a credit counseling service post-hearing is too little, too late. By failing to provide such information, financial considerations security concerns remain.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. Applicant is a hard-working and intelligent individual. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge