



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



In the matter of:)	
)	
)	ISCR Case No. 23-01581
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2024

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 August 30, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). 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 submitted a response to the SOR (Answer) on September 5, 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 November 7, 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 November 30, 2023. His response was due on January 2, 2024. At his request, Department Counsel granted him an extension to submit his response until February 1, 2024, but he did not submit one. The

case was assigned to me on April 1, 2024. The Government's documents, identified as Items 1 through 8 in its FORM, are admitted in evidence without objection.

Findings of Fact

In its FORM, Department Counsel amended the SOR to withdraw the sole SOR allegation under Guideline E numbered as SOR ¶ 2.a. In his Answer, Applicant denied all the Guideline F SOR allegations. (Items 1-2)

Applicant is 40 years old, married since 2005, and he has two children, ages 17 and 15. He served honorably in the U.S. Navy from October 2003 to December 2012, when he medically retired. He worked as a metalsmith for a previous DOD contractor from December 2012 to May 2015. He then worked as a civilian aircraft mechanic for the U.S. Navy from May 2015 to March 2020. As of his October 2021 security clearance application (SCA), he was working as a master mechanic for his employer, a DOD contractor, since March 2020. He has never held a security clearance. He previously owned a home from November 2008 to May 2013 and he has owned the home in which he resides since June 2017. (Item 3)

The SOR alleges that Applicant had five charged-off consumer debts totaling \$96,441. (SOR ¶¶ 1.a-1e) The allegations are established by Applicant's January 2022 background interview with an authorized DOD investigator, his April 2023 response to interrogatories, and credit bureau reports (CBRs) from December 2021, April 2023, and October 2023. (Items 4-8)

Applicant stated in his SCA that while he was on active duty in the Navy, he suffered a lower back injury resulting in multiple back surgeries and his medical retirement. He acknowledged during his background interview that his financial irresponsibility contributed to his delinquent debts. He cited to a period from 2012 to 2013, when he and his spouse were separated, when they went on irresponsible spending sprees and neither paid their debts because they assumed the other was doing so. He also indicated that in 2012 or 2013, tenants who were renting his home severely damaged it upon moving out and he was unable to rent it for a time, which created unexpected expenses. He also indicated he was unaware of some of his delinquent debts because his spouse has managed the household finances. He indicated that he hired a debt consolidation company in 2018, to whom he pays \$700 monthly, to repair his credit and pay his debts, but he did not provide documentation supporting this claim. (Items 3-5)

SOR ¶ 1.a is a personal loan charged off for \$54,321. Applicant and his spouse obtained this loan in approximately 2016 to pay their debts. He stated in his April 2023 response to interrogatories that this debt "was reported as fraud almost ten years ago." He did not provide documentation to corroborate his claim that this was a fraudulent debt or that he was disputing it, and it is reported on the most recent CBR from October 2023. It remains unresolved. (Items 4-8)

SOR ¶ 1.b is a personal loan charged off for \$15,488. Applicant and his spouse obtained this loan in 2016 to purchase a boat. He indicated during his background interview that he sold the boat. Although he noted in his April 2023 response to interrogatories that he paid this debt, he failed to provide corroborating documentation. The most recent CBR from October 2023 reports this debt with an outstanding balance of \$9,292 and notes, “paying under a partial payment agreement.” It appears that the last payment made by the debt consolidation company toward this debt was in September 2022. He failed to provide proof of payments toward the remaining balance reported on the most recent CBR and this debt remains unresolved. (Items 4-8)

SOR ¶ 1.c is a credit card charged off for \$12,668. The April 2023 and October 2023 CBRs reflect that this debt was settled and paid. (Items 4-8)

SOR ¶ 1.d is a store credit card charged off for \$7,603. Applicant obtained this credit card in approximately 2012 or 2013. The April 2023 and October 2023 CBRs reflect that this debt was settled and paid. (Items 4-8)

SOR ¶ 1.e is a \$6,361 charged-off account. The October 2023 CBR reports this debt as “paid for less than full balance, paid charge off.” (Items 4-8)

Aside from the debts in SOR 1.a and 1.b, as previously discussed, the most recent CBR from October 2023 reflects that Applicant does not have any other delinquent debts. In his April 2023 response to interrogatories, he reported a monthly net remainder of \$7,162. During his background interview, Applicant described his financial situation as good because he has a full-time job and he can meet his financial obligations. He also indicated that he has not received financial counseling but he was utilizing the services of the debt consolidation company, he has learned from this experience, and he was unlikely to incur any future delinquent debts. (Items 4-6)

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 some of his delinquent debts. However, he acknowledged that his financial irresponsibility also played a contributing factor. Although he has resolved the debts in SOR ¶¶ 1.c through 1.e, he has not provided documentation to corroborate his efforts to resolve the significant remaining delinquent debts in SOR ¶¶ 1.a and 1.b. 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.b:	Against Applicant
Subparagraphs 1.c - 1.e:	For 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