



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



In the matter of:)	
)	
)	ISCR Case No. 23-02487
)	
Applicant for Security Clearance)	

Appearances

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

07/25/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On December 1, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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.

In an undated answer to the SOR, Applicant 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 April 15, 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 8. Applicant did not respond to the FORM or object to any of the Government's exhibits. The case was assigned to me on July 17, 2024. The Government's exhibits are admitted in evidence.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.d. He denied SOR ¶¶ 1.b, 1.c, 1.e through 1.h, and 2.a. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He earned a bachelor's degree in 2014. He has worked for his present employer, a federal contractor, since 2017. His military service includes active reserve from January 1999 until March 2010 when he was honorably discharged. He married in 2000 and has a 17-year-old child. (Item 2)

Applicant completed a security clearance application in August 2021. He disclosed a period of unemployment from March 2015 to August 2015. In response to Section 26, which asked if in the last seven years he had any debts turned over to a collection agency; accounts or credit cards suspended, charged off or canceled for failing to pay as agreed; or if he had been over 120 days delinquent on any debt, he answered "no." (Item 2)

In April 2022, Applicant was interviewed by a government investigator. He was confronted by the investigator with the accounts alleged in the SOR. His responses are as follows:

--SOR ¶ 1.a (\$16,101). He did not recognize the account. He denied the debt in his SOR answer. (Items 1, 3)

--SOR ¶ 1.b (\$9,060). He acknowledged the account and said it was an old account possibly used to pay his son's medical bills. He thought it had been paid. He was going to investigate the status of the account. He then denied the account in his SOR answer. (Items 1, 3)

--SOR ¶ 1.c (\$7,174). He did not recognize the account. He admitted this account in his SOR answer. (Items 1, 3)

--SOR ¶ 1.d (\$5,089). He said that the account was a credit card he used to purchase fuel and food. He fell behind on paying it after he was laid off in 2015. He planned to investigate the status of the account. He admitted the debt in his SOR answer. (Items 1, 3)

--SOR ¶ 1.e (\$3,052). He did not recall this account. He denied the account in his SOR answer. (Items 1, 3)

--SOR ¶ 1.f (\$177). He acknowledged this account was for cable services. He changed services and believed his new service was to pay the bill owed to the former service. He said he contacted the creditor in 2022. He planned to investigate the account again. He denied the account in his SOR answer. (Items 1, 3)

--SOR ¶ 1.g (\$5,033). He did not recall the account. He denied the account in his SOR answer. (Items 1, 3)

--SOR ¶ 1.h (\$1,378). He acknowledged this account was for changing cell phone carriers. He believed his new carrier was to pay his former carrier's bill. He contacted the new carrier in January 2022. He planned to contact the carrier again. He denied the account in his SOR answer. (Items 1, 3)

Applicant told the investigator that he failed to disclose any delinquent debts on his SCA because he could not recall accounts and thought there were no issues since he was current on the accounts he was aware of. In May 2022, he was reinterviewed by a government investigator. He attributed his financial issues to being laid off in 2006 and again in 2015. When he obtained new employment, his medical insurance increased, and he was responsible for paying a higher premium and other out-of-pocket expenses. He said he was unaware some accounts were in collection because his wife handles the finances. He said he had contacted his creditors and was trying to resolve the delinquent accounts, but they did not provide a response. For the debt in SOR ¶ 1.d he said he was told they were unable to locate the account due to its age. He said he wants to pay his debts once he figures out what he owes. (Item 3)

Applicant completed government interrogatories in October 2022. For the debts in SOR ¶¶ 1.a through 1.f, and 1.h he indicated the debts were not paid, he did not have payment arrangements, and he was not making payments. He disclosed he had another delinquent debt (\$358) that was not alleged in the SOR, but he had made payment arrangements to resolve that debt. He stated: "This is the first time I have had any issues with my security clearance. I am working to get everything corrected. Please work with me as I work through this process." (Item 4) He provided a statement indicating he has no record of the debts in SOR ¶¶ 1.a, 1.b, 1.e and 1.f on his credit report and no action had been taken. Regarding the debts in SOR ¶¶ 1.c and 1.d, he said he would set up a payment plan after he pays the \$358 debt. He said he contacted the creditor in SOR ¶ 1.g but it no longer had the paperwork for the account. (Item 4)

Applicant and his wife both work. He provided a personal financial statement. After paying the household necessities (mortgage, electric, water, cable, internet, cell phone, car payments, gas, insurance, food, pet food, pet insurance, and medical), he included monthly payments for streaming services and audible books (\$46), haircuts (\$100), nails (\$300), massage services (\$70), storage unit (\$358) and car wash (\$60). His personal financial statement did not include payment of any of the delinquent debts alleged in the SOR. (Item 4)

Applicant's admissions and credit reports from January 2022, November 2022, September 2023, and March 2024 corroborate the debts alleged in the SOR. (Items 1, 3, 4, 5, 6, 7, 8)

Applicant did not respond to the FORM or provide any evidence that he is paying any of the debts, has made payment arrangements, or has a legitimate dispute as to their validity.

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; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that he has not paid or resolved. 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

(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.

Applicant did not provide evidence that he has made any payments on his delinquent debts; made payment arrangements; has a legitimate dispute and documented proof to substantiate the basis of the dispute, or evidence to show actions he has taken to resolve the issues. His delinquent debts remain ongoing. AG ¶¶ 20(a) and 20(e) do not apply.

Applicant attributed his financial difficulties to a period of unemployment in 2006 and for six months in 2015. Unemployment is a condition beyond his control. For the full application of AG ¶ 20(b), he must show he acted responsibly under the circumstances. He did not provide evidence that he has taken action to resolve his delinquent debts. He has been on notice that his finances have been a security concern since at least 2022 when he was interviewed by a government investigator and later that year when he completed government interrogatories about his delinquent debts. He did not provide evidence of responsible actions he has taken in the past nine years since his more recent period of unemployment or since 2022 when he was confronted with his delinquent debts. Applicant has not acted responsibly under the circumstances. AG ¶ 20(b) has minimal application.

There is no evidence Applicant participated in financial counseling. He provided a budget of his monthly expenses, which does not reflect that any of the debts alleged in the SOR are being paid. He did not provide evidence that he has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. He did not provide a

response to the FORM indicating the current status of his delinquent debts and what actions he is taking to resolve the financial concerns. AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant told the government investigator that he was unaware that he had accounts that were delinquent. He said his wife handled the finances, and he claimed the accounts he was aware of were not delinquent. There is insufficient evidence to conclude that Applicant deliberately failed to disclose his delinquent debts on his SCA. AG ¶ 16(a) does not apply. I find in Applicant's favor under the personal conduct guideline.

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. The Guideline E, personal conduct allegation was refuted.

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.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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