



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



In the matter of:)	
)	
)	ISCR Case No. 22-01664
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2024

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Financial Considerations guideline. Based upon a review of the full record, national security eligibility for access to classified information is denied.

History of Case

On September 26, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued 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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), which came into effect on June 8, 2017. Applicant submitted his written Answer to the SOR on January 12, 2023. He admitted the allegations in SOR ¶¶ 1.a, 1.d, and 1.h; denied SOR ¶¶ 1.b, 1.c, 1.e through 1.g, and 1.i through 1.k; and requested a hearing before an administrative judge.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 17, 2023, and I received the case file on February 28, 2023. DOHA issued a Notice of Hearing on March 8, 2023, setting the hearing for March 24, 2023. On that date, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant testified but offered no documentary evidence. All exhibits were admitted without objection. I left the record open until April 7, 2023, for possible submission of additional documentary evidence in mitigation or rebuttal. Neither party submitted any additional evidence, and the record closed as scheduled. DOHA received the hearing transcript (Tr.) on April 5, 2023.

Findings of Fact

Applicant is 64 years old. He married a citizen of Thailand in 2015, after meeting her while vacationing in Thailand for a month. His wife is now a legal resident of the United States. His two previous marriages ended by divorce in 1989 and 1999. Applicant has no children. He attended some community college classes during the 2013-2014 school year. He began his current employment as a quality control inspector with a major defense contractor in July 2018, but has worked primarily on commercial product lines. He served in the Marine Corps from June 1978 to April 1986, when he was administratively separated before the end of his enlistment. He received a General discharge, at paygrade E-3, following several incidents of misconduct for which he received non-judicial punishment. He held a Secret security clearance during his Marine Corps service, but it lapsed after his discharge. (GE 1; GE 2; Tr. 6, 23-26.)

Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP) on September 17, 2021, seeking to obtain national security eligibility so he could perform quality control inspection duties on some military projects without requiring an escort. Applicant's SOR listed 11 delinquent consumer debts, totaling \$34,502, based on his e-QIP disclosures of financial issues, and credit reports obtained by the Office of Personnel Management (OPM) while investigating the application. During his hearing, Applicant acknowledged the validity of all the alleged debts, which are also confirmed by more recent credit reports that were submitted as Government Exhibits. He said that he formally denied some of them in his Answer because, due to their age, they no longer appeared on a credit report he obtained. (GE2-GE 5; Tr. 22-23, 28-34, 37, 45.)

During his October 2021 interview with an OPM investigator, Applicant said that he had sufficient resources to repay all of his delinquent debts but did not intend to do so because he wanted to retain those funds for use on other spending during his impending retirement. He also said that his second former wife is aware of his delinquent financial accounts but, "Due to cultural differences, [his] current wife is not aware of [his] debts." (GE 2.)

Applicant testified that all of the SOR-listed debts remain unpaid and that he had no intention to repay them to save funds for retirement. Although not alleged in the SOR, Applicant filed two previous Chapter 7 bankruptcies, in May 1996 and October 2003, that

resulted in discharge of his unpaid debts at those times. He testified that he decided not to file for bankruptcy relief from his delinquent debts this time because he was concerned that formally declaring insolvency would interfere with his financial eligibility to sponsor his then-fiancée from Thailand for legal immigration status. (GE 2; GE 6; GE 7; Tr. 18-19, 34-40, 44.)

Applicant testified that he does not care whether he is granted national security eligibility because he intends to retire and obtaining a security clearance would only benefit his employer's ability to detail him to perform work without an escort. The record remained open after the hearing for submission of documentary evidence of professional performance, financial updates, or other character references but neither party submitted anything further. (Tr. 44-47.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions. 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 AG ¶ 2 describing the adjudicative process.

The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 2(c), the entire process is a conscientious scrutiny of several variables known as the whole-person concept. The administrative judge must consider all available, pertinent, and reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for national security eligibility 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. I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for national security eligibility seeks to enter 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 eligibility

for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of protected information.

Section 7 of EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant admittedly still owes 11 delinquent consumer debts, totaling \$34,502. These debts have been delinquent for so long that some have fallen off current credit reports, and his reason for not attempting to discharge them through his third Chapter 7 bankruptcy filing predated his 2015 marriage to his third wife. Through his financial inability and expressed unwillingness to repay them, they remain unresolved. These facts

establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial delinquencies:

(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.

Applicant failed to establish mitigation under any of these conditions. All the delinquent debts of concern remain unresolved, demonstrating his current unreliability and the likelihood of recurrent problems. He had earlier unpaid debts discharged through Chapter 7 bankruptcies in May 1996 and October 2003, which shows that his continuing failure to meet financial obligations is not a recent development. He provided no evidence that he obtained or is following professional counseling to establish financial responsibility. There are no documented indications that the problem is being resolved or is under control. His delinquent debts remain outstanding. Given his history of financial irresponsibility and plans to retire from his employment, they create ongoing potential for financial coercion and increased risk of having to engage in illegal or otherwise questionable acts to generate funds.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and accountable Marine Corps veteran who defaulted on more than \$34,500 in voluntarily incurred debt after two previous Chapter 7 bankruptcies. He documented no attempt, workable plan, or available resources to resolve his current delinquent debts despite his current employment with a defense contractor for more than six years. There remains significant potential for pressure, coercion, exploitation, or duress, which is likely to continue. Applicant failed to meet his burden to mitigate the security concerns arising under the Financial Considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.k:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge