



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



In the matter of:)
)
) ISCR Case No. 23-02648
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to demonstrate that he has acted responsibly to address and resolve his financial delinquencies. He did not provide sufficient evidence to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), or security clearance application (SCA), on January 25, 2023. (Item 3) On November 29, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017. Applicant provided an undated response to the SOR, and requested a decision based upon the administrative record. (Answer)

A copy of the file of relevant material (FORM), dated February 28, 2024, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant received the FORM on March 11, 2024, and he was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM and did not provide any documentation. On June 20, 2024, the case was assigned to me. I admitted into evidence the Government's FORM Items 1 through 6.

Findings of Fact

Applicant is 49 years old. He honorably served 20 years in the U.S. Air Force (USAF) and then retired. He was married in 2001 and divorced in 2007. He married again in 2010. He has two children, ages 21 and 19, and four stepchildren. He earned an associate degree in 2017, and, in 2021, he earned a bachelor's degree. Since December 2022, he has been employed by a federal contractor. (Item 3)

Applicant did not disclose any adverse financial information on his January 2023 SCA, as required. A February 2023 credit report showed he had approximately 15 delinquent or past-due accounts and one account in foreclosure/repossession. The SOR alleged 10 delinquent accounts totaling \$48,643. He attributed his financial problems to retiring from the USAF and then experiencing a "financial downturn." (Items 2, 3, 6)

SOR ¶ 1.a alleges a charged-off account in the amount of \$22,587. In his Answer, Applicant stated that, after his retirement from the USAF, he was unable to continue the payments on a car that his wife had purchased. He voluntarily returned the vehicle to the creditor. He failed to provide sufficient evidence to show that he paid, is currently paying, or that he has settled this delinquent account. This debt remains unresolved. (Items 2, 4-6)

SOR ¶ 1.b alleges a charged-off account in the amount of \$15,398. In his Answer, Applicant stated that, after his retirement from the USAF, he was unable to continue the payments on a trailer. He voluntarily returned the trailer to the creditor. He failed to provide sufficient evidence to show that he paid, is currently paying, or that he has settled this delinquent account. This debt remains unresolved. (Items 2, 4-6)

SOR ¶ 1.c alleges a charged-off account in the amount of \$5,427. In his Answer, Applicant stated that he does not recognize this credit card account. He failed to provide sufficient evidence to show his efforts to initiate contact with the creditor to verify the account, or that he paid, is currently paying, or that he has settled this delinquent account. This debt remains unresolved. (Items 2, 4-6)

SOR ¶ 1.d alleges a charged-off account in the amount of \$2,432. In his Answer, Applicant admitted this credit-card account, but he denied that he owes the amount alleged. He has tried to settle this account on more than one occasion. He made payment arrangements with the creditor; however, he stated that the creditor did not follow through with their part of the bargain. He failed to provide sufficient evidence to show contact with

the creditor and the agreed upon settlement, or that he paid, is currently paying, or that he has settled this delinquent account. This debt remains unresolved. (Items 2, 4-6)

SOR ¶¶ 1.e, 1.f, and 1.g allege medical accounts in the total amount of \$1,620, which were referred for collection. In his Answer, Applicant denied these medical debts. He stated the debts developed due to a TRICARE insurance mistake. He said Tricare told him they would try to pay it again. He failed to provide sufficient evidence to show correspondence with TRICARE insurance, or that he paid, is currently paying, or that he has settled these delinquent accounts. These debts remain unresolved. (Items 2, 6)

SOR ¶ 1.h alleges an account in the amount of \$710, which was referred for collection. In his Answer, Applicant denied this debt because he considers it a fraudulent claim. This debt stems from a rental property Applicant was leaving, and the management company promised to fix all the issues with the property before the next tenants moved into the rental. The management company did none of the promised repairs and kept Applicant's deposit. The amount alleged in the SOR is for the repairs not covered by the deposit. Applicant reported this debt as fraud and filed a claim with the Better Business Bureau (BBB). He stated that this account is no longer on his credit report. He failed to provide sufficient evidence of his efforts to resolve the debt, such as correspondence with the management company, BBB, and/or his fraud report. There is no documentation of resolution. This debt remains unresolved. (Items 2, 6)

SOR ¶ 1.i alleges a charged-off account in the amount of \$409. In his Answer, Applicant admitted this debt and listed that he has paid the debt. He failed to provide supporting documentation. This debt remains unresolved. (Item 5, 6; Answer)

SOR ¶ 1.j alleges a charged-off account in the amount of \$60. In his Answer, Applicant admitted that he had a credit card with the creditor, but he denied that he owed \$60. He stated this debt was paid in full. He failed to provide supporting documentation. This debt remains unresolved. (Items 2, 4-6)

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts and his admissions establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 or provides evidence or actions to resolve the issue.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

None of the mitigating conditions can be applied here. Applicant attributed his financial delinquencies to loss of income following his retirement from the USAF. Notwithstanding the events that affected his finances, Applicant must demonstrate that he acted responsibly under the circumstances.

Applicant has not met his burden of production and persuasion in mitigation. He made several claims in his Answer to the SOR, but he did not provide supporting documentation of his efforts to pay, resolve, settle, or challenge the established debts. There is no evidence of insurance error, fraud, or any showing of a settlement, arranged payment plan, or that he is paying or has paid a debt in full. Overall, I find that Applicant has not demonstrated that he acted responsibly to address his financial delinquencies, or that his finances are currently under control. Applicant did not provide sufficient evidence to mitigate the financial considerations security concern.

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.

Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address security concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake.

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 conclude Applicant has not met his burden of proof and persuasion, and he failed to mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

