



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



In the matter of:)
)
) ISCR Case No. 23-01232
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson Esq., Department Counsel
For Applicant: *Pro se*

07/09/2024

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 1, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). 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 August 22, 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 March 19, 2024. 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 April 2, 2024. His response was due on May 2, 2024. Applicant did not provide a response to the FORM. The case was

assigned to me on June 6, 2024. The Government's documents, identified as Items 1 through 7 in its FORM, are admitted in evidence without objection.

Findings of Fact

Applicant admitted SOR ¶ 1.b and denied SOR ¶¶ 1.a and 1.c in his Answer. He is 70 years old. He married in January 1978, divorced in March 1978, remarried in June 1979, divorced in July 1996, and married his current spouse in July 2005. He has three children, ages 50, 39, and 32. He served honorably in the U.S. military from June 1978 to July 1995. He previously worked as a telephone technician for a non-defense contractor from February 2009 to March 2018. He has since worked in the same capacity for his current employer, a defense contractor. He has never held a security clearance. He has owned his home since 2004. (Items 1-3)

The SOR alleges that Applicant had three delinquent consumer debts: a \$18,048 charged-off auto loan, a loan in collection for \$3,405, and a \$32,599 charged-off personal loan, totaling \$54,052. (SOR ¶¶ 1.a-1.c) The allegations are established by Applicant's admission in his Answer, his March 2023 background interview with an authorized DOD investigator and credit bureau reports (CBRs) from December 2022 and July 2023. The most recent CBR from March 2024 does not reflect any delinquent debts. (Items 2, 4-7)

Applicant obtained the auto loan in SOR ¶ 1.a in around 2012. He was late or unable to make payments toward the loan, and the debt was sent to a collection company in around 2016. He indicated in his background interview that he settled this debt and made a final payment toward the settlement in June 2017. In his Answer, he stated that the debt was not delinquent, the creditor relieved him of further action on this account, and the account was closed. He did not provide documentation to corroborate his claim that he settled and paid this debt. (Items 2, 4-6)

Applicant obtained the loan in SOR ¶ 1.b in around 2015 to pay other debts. He was late or unable to make payments toward the loan, and the debt was sent to a collection company in around 2016. He indicated in his background interview that he unsuccessfully attempted to contact the original creditor on multiple occasions between 2017 and 2018, when he stopped trying to do so. He believed the account was closed as he had not been contacted by a collection agency. Should that happen, he is willing to resolve this debt. In his Answer, he stated that the creditor "brought this account up to date and it is no longer delinquent as of August 2023." He did not provide documentation to corroborate his claim that this debt has been resolved. (Items 2, 4-6)

Applicant obtained the personal loan in SOR ¶ 1.c between 2009 and 2015 to pay other debts. He was late or unable to make payments toward the loan, and the debt was sent to a collection company in around 2016. He indicated in his background interview that he settled this debt and made a final payment toward the settlement in May 2017. In his Answer, he stated that the creditor "has recovered its assets and

closed this account and is satisfied with it.” He did not provide documentation to corroborate his claim that this debt has been resolved. (Items 2, 4-6)

During his background interview, Applicant attributed his delinquent debt to minimal income since 2008. He indicated that his financial situation was in good standing since he began collecting his military retirement pay and social security benefits in around 2021. He reported a monthly household net income of \$8,612, which includes a monthly net military retirement of \$1,156 and a monthly net social security benefit of \$2,385. After expenses, he indicated his monthly net remainder was approximately \$1,970. There is no evidence in the record that he has received financial counseling. (Item 4)

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.

Limited income is a condition beyond Applicant's control that contributed to his delinquent debts; however, recently his income has increased, and he did not show that he acted reasonably under the circumstances by providing documentation showing his efforts of debt resolution. It is reasonable for an administrative judge to expect an applicant to present documentary evidence showing resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). "[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016).

There is no evidence that Applicant 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.c:	Against 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