



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



In the matter of:)
)
) ISCR Case No. 23-01333
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 5, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on October 16, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on July 18, 2024.

The hearing was convened as scheduled on September 10, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 4, without objection. Applicant did not provide documentary evidence for admission. I received a transcript (Tr.) of the hearing on September 18, 2024.

Findings of Fact

Applicant is a 36-year-old employee of a government contractor. He has worked for his current employer or a predecessor thereof since March 2018. He was married from 2013 until a divorce in about October 2018. He has two children, ages 15 and 11. He earned a high school diploma in 2006 and took some college courses. He served on active reserve duty in the Navy from 2009 until November 2023, when he received an honorable discharge. (Tr. 18-21, 59; GE 1, 2)

In the SOR, the Government alleged that Applicant has six delinquent debts totaling approximately \$22,000 (SOR ¶¶ 1.a through 1.g). These delinquencies consist of the following: automobile loans (SOR ¶¶ 1.a and 1.b); credit cards (SOR ¶¶ 1.c through 1.e); and a federal tax debt (SOR ¶ 1.f). The Government also alleged that he failed to file his federal income tax returns for the 2017 and 2018 tax years, as required (SOR ¶ 1.g). He denied the allegations in SOR ¶¶ 1.a, 1.c., and 1.d, and admitted the remaining SOR allegations. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's May 2023 and September 2024 credit reports. (SOR; Answer; GE 3, 4)

The automobile loan in SOR ¶ 1.a for \$15,416 is not resolved. Applicant opened this account in his name to purchase a vehicle for his ex-wife before their divorce. He became delinquent on this account when he and his ex-wife separated. However, he also testified that the vehicle was repossessed prior to their divorce in the summer of 2016. He claimed that his ex-wife was supposed to be responsible for this account, but he provided no documentary evidence to support this claim. He disputed this account through Equifax because he thought it was time-barred by the statute of limitations (SOL). He provided insufficient evidence to support this theory. He made no payments on this debt after it became delinquent. His plan was to dispute it or allow it to age off his credit report. While this debt does not appear on his September 2024 credit report, there is insufficient evidence in the record to determine the reason. He provided no documentation regarding this account or his resolution efforts. (Tr. 29-32, 52; Answer; GE 1-3)

The automobile loan in SOR ¶ 1.b for \$5,864 is not resolved. Applicant opened this account to purchase a truck in June or July 2016. The creditor repossessed the vehicle sometime in 2018. He fell behind on this account because he left a job that he strongly disliked and had not yet found a new one. He made no payments on the account after the vehicle was repossessed. He disputed the account with Equifax for reasons that are unclear. While this debt does not appear on his September 2024 credit report, there is insufficient evidence in the record to determine the reason. He provided no documentation regarding this account or his resolution efforts. (Tr. 32-37; Answer; GE 1-3)

The credit-card debt in SOR ¶ 1.c for \$872 is not resolved. Applicant opened this account, and his ex-wife was an authorized user. He disputed this account because he believes his ex-wife should be responsible for some of it. He also claimed that the debt was time-barred by the SOL. Other than disputing the debt with Equifax, he has taken no

other resolution efforts with respect to this debt. While this debt does not appear on his September 2024 credit report, there is insufficient evidence in the record to determine the reason. There is also insufficient evidence to show that it is time-barred by the SOL. He provided no documentation regarding this account or his resolution efforts and planned to allow it to age off his credit report. (Tr. 37-38; Answer; GE 1-3)

The credit card in SOR ¶ 1.d for \$663 is not resolved. Applicant made no resolution efforts on this account. He disputed this account with Equifax, but he provided no basis for his dispute. He provided no documentation regarding this account. (Tr. 39; Answer; GE 1-4)

The credit card in SOR ¶ 1.e for \$146 is not resolved. Applicant opened this account in January 2021. The last payment he made on this account was in January 2022. He has made no resolution efforts on this account since then. He believes this is a secured credit card, so he does not understand how he owes money on it, but he did not contact the creditor to try to clear up his confusion. He did not provide any documentary evidence regarding this account. (Tr. 39-41; Answer; GE 1-4)

The federal tax debt in SOR ¶ 1.f for \$5,532 is being resolved, however, the nature and extent of the resolution is unclear. This tax debt accrued in tax years (TY) 2014, 2016, 2020, and 2021. Applicant claimed that, in April 2024, he hired a certified public accountant (CPA) who filed his federal income tax return for TY 2023, and that helped “alleviate” some of his federal tax debt with an offset of his TY 2023 refund of about \$1,000. He claimed that some of his payments, including a \$351 payment they “took” recently are not appearing on the IRS website, so he needs to contact the IRS to clear up this issue. He claimed that he contacted them about this issue once during the COVID-19 pandemic, but the IRS was short staffed, so he could not speak to anyone who could answer his question. He also claimed that he contacted the IRS again in about March 2023, and again could not speak to anyone there. Conversely, he testified that the IRS website does reflect payments. The IRS website no longer shows a balance for 2014 and shows a reduced balance of \$2,028 (down from \$3,892) for TY 2016. He claimed that, on the day of the hearing, the IRS website showed his total balance as \$3,751. He testified, “they are taking money from me, so it is getting paid.” He does not have a payment arrangement with the IRS but claimed that he tried to make one and could not get through to anyone over the phone. (Tr. 41-47, 52-59; Answer; GE 1, 2)

The unfiled federal income tax returns for TYs 2017 and 2018 alleged in SOR ¶ 1.g are not resolved. Applicant did not timely file his federal income tax return for TY 2017, because he believes it was lost in the mail. He also claimed that he had trouble obtaining his W-2 form for that tax year. He claimed that he reached out to the IRS at some point about his change of address, but so much time passed by that he “just gave up on it.” He claimed that the same thing happened with respect to his TY 2018 federal income tax return. He explained that he was going through a very rough time in life, was not making much money, and was more worried about where he would get his next meal. While it is not alleged in the SOR, he also did not file his TY 2022 federal income tax return because he had issues with TurboTax. He believes that he owes federal taxes for TY 2022. He plans to re-hire the CPA that filed his TY 2023 federal income tax return to file his TY

2017, 2018, and 2022 income tax returns, and mentioned this possibility to her while she was helping him with his income tax return for TY 2023. He also plans to ask her to make a payment arrangement with the IRS on his behalf to pay his delinquent taxes. (Tr. 45-50, 52-59; GE 1, 2)

Applicant earns a \$96,000 annual base salary. He is unsure of his current budget because of a recent change in circumstances that has made it unnecessary to pay his significant rent payment. Sadly, his mother passed away within the last two weeks. She left him her home and land where he will reside, saving him about \$1,000 per month. Whereas he had about \$500 in surplus at the end of each month, he anticipates having about \$1,500 in surplus at the end of each month. He has a monthly truck payment of \$1,160 for a 2019 half-ton pickup truck that he purchased in 2022 for about \$53,000. He bought the truck because he wanted it for a boat cleaning business he started. He has no money in savings. About a month before the hearing, he tried to enroll with a debt consolidation company, but claimed the company told him he did not qualify. He assumes that he did not qualify because of his credit. He attributes his financial issues to his divorce and a period of unemployment and underemployment from August 2018 until January 2019. (Tr. 21-25, 28-29, 35-37, 50-52; GE 4)

While they are not alleged in the SOR, Applicant has two furniture loans, a cable account, and two credit cards on which he is currently delinquent. The furniture loans are past due in the amount of \$643 and \$1,385, with total loan balances of \$3,463 and \$8,277, respectively. The cable account is in collections with a balance of \$260. The two credit cards are past due in the amount of \$168 and \$271, with total balances of \$826 and \$4,253, respectively. Now that he has an extra \$1,000 per month, he plans to contact his creditors, settle these non-SOR accounts, and never borrow money again. (Tr. 25-28; GE 4)

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 security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts;

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

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had six delinquent debts totaling about \$22,000. One of those debts is a delinquent federal tax debt. He failed to file his federal income tax returns for TYs 2017 and 2018, as required. The above disqualifying conditions are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant's financial issues are recent and ongoing. With the exception of some offsets to the IRS, he has not provided sufficient evidence that he has resolved or is resolving his SOR debts or his income tax filing deficiencies. On the contrary, he failed to timely file his federal income tax return for TY 2022, and he believes that he will owe additional federal taxes if and when he does file that return. Although he has reduced the balance of his federal tax debt, he does not have a current payment arrangement with the IRS. He also has additional delinquent debts that were not included in the SOR. He has not established a track record of financial responsibility. AG ¶¶ 20(a) and 20(g) do not apply.

Applicant's delinquencies were caused by a divorce and unemployment or underemployment. The immediate cause of the unemployment and underemployment was that he quit a job in 2018. These causes are both beyond and within his control. Regardless, the lack of evidence of the resolution of his SOR debts, his lack of compliance with tax requirements, and his plan to let some of the SOR debts age off his credit report means that AG ¶ 20(b) and AG ¶ 20(d) do not apply.

Applicant claims that several of the SOR debts are time-barred by the applicable SOL. This could be a reasonable basis to dispute the legitimacy of a debt. However, he did not provide documented proof of information such as debt accrual dates that would substantiate such a claim. He also disputed debts for undisclosed reasons, or because he thought his ex-wife should be responsible for some of the debt. His failure to provide a reason for a dispute means he did not provide a reasonable basis for it. When he claimed his ex-wife should be responsible for certain debts, he did not provide any documents to show that he is not jointly and severally liable for said debts. AG ¶ 20(e) does not apply.

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.

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 and have considered

Applicant's military service. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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.g: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge