



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



In the matter of:)
)
) ISCR Case No. 23-00835
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

09/20/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

On May 9, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. Applicant responded to the SOR on August 4, 2023, and requested a hearing before an administrative judge. The case was assigned to me on January 17, 2024. The hearing convened as scheduled on March 27, 2024.

Evidentiary and Procedural Rulings

Evidence

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) T through HH, which were admitted in evidence without objection. AE A through S were attached to the SOR

response. There were originally two documents marked AE S. I have remarked the second document as AE HH.

Because it had been more than five months since the hearing, on August 30, 2024, I offered Applicant the opportunity to reopen the record for additional documentary evidence. Applicant did not submit anything additional. Email correspondence on this matter is marked Hearing Exhibit (HE) III.

SOR Amendment

Department Counsel amended the SOR by withdrawing SOR ¶¶ 1.e and 1.f. (Transcript (Tr.) at 8-10)

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since February 2023. He has worked for federal contractors since 2012. He seeks to retain a security clearance, which he has held since about 2014. He attended college for a period without earning a degree, and he has a certificate of completion of a vocational school. He is married, with four children. He and his wife also care for two children who live with them. (Tr. at 13-16, 19, 51, 55-56; Applicant's response to SOR; GE 1; AE R)

Applicant has a history of financial difficulties, dating back at least nine years. His wife became ill in about 2015, which left her disabled and unable to work a full-time job. There were also medical costs that were not paid by insurance. Applicant and his wife became primary caregivers for her elderly mother in 2015. They moved into his mother-in-law's home and spent about \$3,000 to \$4,000 to upgrade the home to make it accessible. His mother-in-law made his wife co-owner of the property. The home passed to his wife on her mother's death in 2020. They incurred additional expenses related to a lien on his mother-in-law's property. (Tr. at 19-24, 46-48; Applicant's response to SOR; GE 2-5; AE J, L, O, X, DD)

Applicant's wife's friend and four children were homeless. He and his wife let the family stay with them in 2021. His wife and her friend had a falling out, and the friend moved out, but one child stayed. Sometime later, another child was in a dangerous situation and moved back to live with Applicant and his wife. They incurred legal expenses to be named guardians of the child who moved back. They have taken on financial responsibility for both children without the benefit of support from their mother or the state. (Tr. at 24-28, 51, 58; Applicant's response to SOR; AE Y, Z, DD)

The amended SOR alleges six delinquent debts totaling \$21,320. Applicant admitted that he owed all the debts, except he denied that he still owed the \$2,334 charged-off credit card debt alleged in SOR ¶ 1.c. That creditor issued an IRS Form 1099-C (Cancellation of Debt) in 2022 cancelling \$2,334 in debt. (Applicant's response to SOR; AE D)

SOR ¶ 1.a alleges a charged-off debt of \$11,899 owed on the deficiency balance of an auto loan after the vehicle was repossessed. Applicant stopped making payments after the vehicle broke down in about 2015. He sent a letter to the creditor asking about a settlement, but the creditor is asking too much at this time. He stated that he plans to address this debt after the smaller debts are resolved. (Tr. at 30-32, 38-40; Applicant's response to SOR; GE 2-5; AE B)

SOR ¶¶ 1.b and 1.d allege delinquent debts of \$3,367 and \$2,204 to a collection company collecting two accounts for the same bank. Applicant stopped paying these debts in about 2016. He sent letters to the bank asking about settling the debts, but he cannot afford the settlements. He plans to address these debts after the smaller debts are resolved. (Tr. at 33, 40-43; Applicant's response to SOR; GE 2-5; AE C, E, W)

Applicant was an authorized user on his wife's account that became delinquent with a balance of \$800. (Withdrawn SOR ¶ 1.f) He stated that he was paying the debt and provided documentation of a \$15 payment in March 2024. However, that payment went towards a different non-alleged debt. (Tr. at 34; Applicant's response to SOR; GE 2-5; AE V)

SOR ¶ 1.g alleges a delinquent debt of \$792 to a collection company on behalf of a creditor. Applicant stopped paying this debt in about 2018. He made \$67 payments in June and July 2023, and \$18 payments in February and March 2024. He is on an \$18 per month payment plan. The collection company reported in March 2024 that the balance had been reduced to \$658. (Tr. at 34-35; Applicant's response to SOR; GE 2-5; AE U)

SOR ¶ 1.h alleges a delinquent debt of \$724 to a collection company on behalf of a bank. Applicant stopped paying this debt in about 2019. He made a \$10 payment in March 2024. He is on a \$10 per month payment plan. (Tr. at 35, 43; Applicant's response to SOR; GE 2-5; AE HH)

Applicant stated that his finances have improved. His pay almost doubled to about \$85,000 in March 2023. He and his wife live a frugal lifestyle and are dedicated to the children. He has received financial counseling. He stated that it is important to pay his debts, because he lives in a small house with three bedrooms. He needs to build or buy a bigger house, and he needs a better credit score to do so. He asserted that he will increase his payments after the attorneys' fees for the guardianship and his security clearance proceedings are paid. (Tr. at 27-29, 35-36, 49-51; Applicant's response to SOR; AE A, N, EE-GG)

Applicant submitted letters attesting to his excellent job performance and strong moral character. The authors praised him for his dedication, ethics, trustworthiness, dedication, expertise, professionalism, mentorship, work ethic, reliability, and integrity. They recommend him for a security clearance. (AE O, AA-CC)

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

Applicant has a history of financial problems, including delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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;
- (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 has a history of financial difficulties, dating back at least nine years. His wife became ill in about 2015, which left her disabled and unable to work a full-time job. He and his wife became primary caregivers to her elderly mother in 2015. They moved into his mother-in-law's home and spent about \$3,000 to \$4,000 to upgrade the home to make it accessible. They accepted a homeless friend and four children into their home. The friend moved out, but one child stayed. Sometime later, another child was in a dangerous situation and moved back to live with Applicant and his wife. They incurred legal expenses to have his wife named guardian of the child. They have taken on financial responsibility for the children without the benefit of support from the children's mother or the state. Applicant's financial problems were largely beyond his control, establishing the first prong of AG ¶ 20(b). For full mitigation credit, he must prove that he acted responsibly under the circumstances.

Applicant stated that his finances have improved. His pay almost doubled to about \$85,000 in about March 2023. He had attorneys' fees that needed to be paid, but he has made minimal payments toward his debts. He made \$67 payments in June and July 2023, and \$18 payments in February and March 2024 to one creditor; \$10 to another creditor; and \$15 toward a non-alleged debt. Those payments total less than \$200. As of the date of the hearing, he had payments plans of \$18, \$10, and \$15 for those debts, but it is unknown if he continued with those plans. Intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

If Applicant had a longer period of meeting his payment plans, this decision might have gone for him. As is, he does not have a track record of debt repayment. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The \$2,334 charged-off credit card debt alleged in SOR ¶ 1.c was resolved through an IRS Form 1099-C, not through any action by Applicant. None of the above mitigating conditions are applicable to the other debts.

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. I also considered Applicant's favorable character evidence.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e-1.f:	Withdrawn
Subparagraphs 1.g-1.h:	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.

Edward W. Loughran
Administrative Judge