



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



In the matter of:)	
)	
)	ISCR Case No. 23-01065
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2024

Decision

Curry, Marc E., Administrative Judge:

Although Applicant’s financial problems were caused, in part, by circumstances beyond his control, he has presented insufficient evidence of the progress that he has made to resolve them. Under these circumstances, Applicant failed to mitigate the financial considerations security concerns. His application for a security clearance is denied.

Statement of the Case

On August 24, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On September 25, 2023, Applicant answered the SOR admitting all of the allegations except subparagraph 1.c and 1.d., and requested a decision based on the

evidence on file rather than a hearing. On December 14, 2023, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance-worthiness. The FORM contains eight attachments, identified as Item 1 through Item 8.

Applicant received a copy of the FORM on December 15, 2023, He was given 30 days to file a response. Applicant did not file a response, whereupon the case was assigned to me on February 15, 2024. Item 1 through Item 8 are admitted in evidence without objection.

Findings of Fact

Applicant is a 28-year-old married man with two children, ages seven and five. He is a high school graduate and has earned some college credits. He served on active duty in the U.S. Navy from 2015 to 2019 and was discharged honorably. Since then, he has worked for a defense contractor as a flight operations mechanic.

When Applicant was in the Navy, he briefly received an overpayment for family separation pay (Item 1 at 3) Subsequently, the Navy flagged the error and corrected it by reducing his ongoing pay for two months until Applicant had paid back the overpayment. Living in an area with a high cost of living, and already struggling to make ends meet, Applicant began to fall behind on his bills. Ultimately, Applicant incurred approximately \$22,000 of delinquent debt, as alleged in the SOR. (Item 1 at 3)

Subparagraph 1.a is a loan, totaling approximately \$12,193. Applicant obtained this loan in approximately 2018 to consolidate several other loans that he was struggling to pay at or about the time that the Navy recouped the overpayment. (Item 8 at 1) He contends that he had been satisfying it with \$400 payments for several years (Item 8 at 2), but provided no substantiating evidence. On September 20, 2023, five days before he answered the SOR, Applicant made a \$100 payment to the creditor. (Item 7 at 3) He stated in his Answer that he would continue making \$100 monthly payments, per an agreement with the creditor, until the debt was resolved. (Item 1 at 4)

The debt alleged in subparagraph 1.b is a credit card, totaling \$5,641. (Item 1 at 5) Applicant contends that he set up a payment plan in which he will satisfy the debt in \$100 monthly increments. (Item 1 at 5) He provided no evidence of a payment plan.

The debt alleged in subparagraph 1.c, totaling \$997, is a delinquent credit card bill. Applicant satisfied this debt in February 2023. (Item 1 at 12)

The debt alleged in subparagraph 1.d, totaling \$591. Applicant satisfied this bill. (Item 1 at 6)

Subparagraph 1.e is a debt owed to a department store, totaling \$2,350. (Item 1 at 2) Applicant made a \$50 payment after the issuance of the SOR. (Item 7 at 1) He

contends that he will satisfy it through a payment plan, but provided no proof of the terms of the plan or the payment schedule.

Applicant maintains a budget. He sets aside \$250 per month for debt payments. (Item 8 at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18)

Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant did not begin experiencing financial problems until the Navy miscalculated his pay, resulting in an inadvertent overpayment, which it then corrected it by reducing his pay drastically to recoup the overpayment. During the period Applicant’s pay was reduced, he was unable to keep up with his debts.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

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

As of September 2023, Applicant had satisfied the debts, alleged in subparagraphs 1.c and 1.d, totaling approximately \$1,600. I resolve them in his favor.

Applicant made a \$100 payment towards the resolution of the debt alleged in subparagraph 1.a, and he made a \$50 payment towards the debt alleged in subparagraph 1.e. However, he did not make these payments until after the issuance of the SOR. Moreover, his contention that he had set up a payment plan to satisfy the debt alleged in subparagraph 1.b was unsupported by record evidence. Consequently, the circumstances contributing to Applicant’s financial problems were sufficiently beyond his control to trigger the first part of AG ¶ 20(b), “the conditions that resulted in the financial problems were largely beyond the person’s control” Conversely, he did not provide enough evidence of bill payments to conclude he has been acting responsibly under the circumstances, in order to trigger the second part of AG ¶ 20(b).

Applicant's satisfaction of two of the SOR debts is sufficient to trigger the application of AG ¶ 20(d). However, although Applicant has initiated a good-faith effort to repay debts, he just started paying the debt alleged in subparagraph 1.a after the issuance of the SOR, and he provided no evidence of a payment plan to satisfy subparagraph 1.b. Under these circumstances, AG ¶ 20(d) is only partially applicable.

Applicant deserves credit for satisfying some of his delinquent debts. However, the three largest delinquencies, subparagraphs 1.a, 1.b, and 1.e, remain outstanding. He just started satisfying the debt alleged in SOR subparagraph 1.a after the SOR's issuance and he provided no proof supporting his contention that he had implemented payment plans to satisfy the debts alleged in subparagraph 1.b and 1.e. Under these circumstances, there is not enough evidence of a demonstrated track record of financial reform to conclude Applicant mitigated the financial considerations security concern.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, discussed above, and they do not warrant a favorable conclusion.

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
Subparagraphs 1.c – 1.d:	For Applicant
Subparagraph 1.e:	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.

Marc E. Curry
Administrative Judge