



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



In the matter of:)	
)	
)	ISCR Case No. 23-02481
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2024

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 November 17, 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 January 18, 2024 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on August 6, 2024.

The hearing was convened as scheduled on October 8, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 7 and Applicant Exhibits (AE) A through C, without objection. At Applicant’s request, I left the record open until October 15, 2024, to allow the parties to provide post-hearing evidence. Applicant timely provided AE D, that I admitted without objection. I received a transcript (Tr.) of the hearing on October 15, 2024.

Findings of Fact

Applicant is a 48-year-old employee of a government contractor. He has worked for his current employer since 2002. He has been married since 1996. He has three children. He earned a high school diploma. He served on active duty in the U.S. Navy from 1995 until 1998, when he received an honorable discharge. (Tr. 20-22; GE 1, 2, 6)

In the SOR, the Government alleged that Applicant has four delinquent debts totaling approximately \$22,000 (SOR ¶¶ 1.a through 1.d). These delinquencies consist of the following: automobile loans (SOR ¶¶ 1.a and 1.b); and credit cards (SOR ¶¶ 1.c and 1.d). He admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.c, and denied the allegations in SOR ¶ 1.d. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's 2022, 2023 and 2024 credit reports. (SOR; Answer)

The automobile loan in SOR ¶ 1.a for \$15,616 is resolved, but Applicant did not resolve it. He opened this account in about 2012 to finance the purchase of a vehicle. He became delinquent on this account in about 2015 when his wife was laid off from a job. The creditor repossessed the vehicle in about 2019. He made no efforts to resolve this debt after it became delinquent. In 2023, he received an IRS cancellation of debt form (1099-C) from the creditor canceling about \$14,200 of this debt. (Tr. 22-25; Answer; GE 1-6; AE B)

The automobile loan in SOR ¶ 1.b for \$5,119 is not resolved. Applicant opened this account to purchase a vehicle for one of his daughters. In 2020, his daughter wrecked the car, and his insurance company did not pay his insurance claim. Despite believing that he did, he had no GAP insurance. He could not afford to continue to make the required payments on this loan because his wife was not working at the time. He made no payments on the account after his daughter wrecked the vehicle. In July 2024, he took out a \$6,000 loan on his retirement account intending to pay this account with that loan, but he instead used the loan proceeds to pay the credit-card debt listed in SOR ¶ 1.c, another account not listed in the SOR, and to help one of his daughters go to college. (Tr. 25-29; Answer; GE 1-7)

The credit-card debt in SOR ¶ 1.c for \$839 is not resolved. Applicant opened this account in December 2018. He was delinquent on it by August 2022. A few weeks prior to the hearing, he contacted the creditor and agreed to pay \$400 to settle the account for less than the full balance. He did not make that payment. He claimed that he wanted the creditor to send him "proof" before he paid the settlement amount, but their e-mail "never came through" and was "lost somehow." He claimed that he could pay the \$400 if he needed to. He provided no documentation regarding this account or his resolution efforts. (Tr. 30-31; Answer; GE 1-5, 7)

The credit-card debt in SOR ¶ 1.d for \$1,033 is resolved. Applicant claimed that he believes his brother-in-law, who lived with him for a time, fraudulently used his credit card. Regardless, in about March 2023, he made a payment arrangement with the creditor to pay about \$625 to settle the account for less than the full balance. He provided

documentary evidence that he settled the account for less than the full balance in May 2023. (Tr. 31-33; Answer; GE 1-6; AE C, D)

Applicant and his wife separated for a while in 2008 or 2009, and this issue contributed to his financial issues. He also had financial issues when his wife was laid off or out of work and his was the only family income. He earns a \$120,000 annual salary and his wife earns about \$80,000 per year. He has less than \$5,000 in a checking account that he uses if his joint account with his wife does not have enough savings in it to pay their bills. He has an impending inheritance of about seven acres of land, but he does not know its value. He does not follow a written budget. He has a monthly truck payment of \$700 for a pickup truck that he purchased in 2021. His wife has a monthly car payment of about \$800 per month for a high-end sport utility vehicle that she purchased about two years ago without consulting him. In June 2023, he submitted a personal financial statement in which he claimed that he had about \$1,400 left over in surplus funds at the end of each month. He claimed that his financial situation is better now because his wife has a full-time job that pays more than the job she had in June 2023, and she now owns a cleaning business. He has received bonuses for his work performance and received awards while he was in the Navy. (Tr. 34-39, 44-50; GE 3, 6, 7)

While they are not alleged in the SOR, Applicant has two additional charged-off credit-card accounts with the same creditor. He incurred these debts in the summer of 2023, when his daughter wrecked another car, and he used the credit cards to pay for the repairs. He did not file an insurance claim because he did not want his premiums to go up. The balances due on these two credit cards were \$1,294 and \$1,086, respectively. He could not explain why he did not stay current on these credit cards. Just prior to the hearing, he made an agreement with the creditor to make three payments totaling about \$920 to settle the credit-card account with a balance of \$1,086 for less than the full balance. On September 30, 2024, he made a payment of \$307.73 toward this settlement amount. He is scheduled to make two additional monthly payments of \$307.73 in October and November 2024. He plans to pay the other account once he finishes paying the first one. I will not use information not alleged in the SOR for purposes of disqualification, but I will use that information for purposes of mitigation and whole-person analysis. (Tr. 40-44; GE 7; AE A, D)

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 had four delinquent debts totaling about \$22,000. The SOR debts were delinquent for at least a couple of years. The largest debt was delinquent since 2015. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues are recent and ongoing. He resolved only two of the four SOR accounts. One of those debts was resolved when the creditor cancelled the debt after it went unpaid for many years. The other SOR debt Applicant resolved was the second lowest of the four. He has additional delinquent debts that were not included in the SOR. He has not established a track record of financial responsibility. AG ¶ 20(a) does not apply.

Applicant's delinquencies were caused by a separation from his wife and her unemployment. These causes were beyond his control. For AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances. He did so with respect to the debt in SOR ¶ 1.d., which he paid for less than the full balance before the SOR was issued. Therefore, AG ¶ 20(b) has some applicability. His efforts to resolve this SOR debt also means that AG ¶ 20(d) has some applicability. Any other payment arrangements he made on his delinquent debts (included in the SOR and otherwise), he undertook after the SOR was issued, detracting from the applicability of AG ¶¶ 20(b) and 20(d). This finding is based upon the concept that an Applicant who acts to mitigate security concerns only after his personal concerns are threatened, such as by the potential loss of his or her

security clearance, may not be motivated to follow rules and regulations when his personal interests are not affected.

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, his financial instability over a significant time period 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.c:	Against Applicant
Subparagraph 1.d:	For 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