



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



In the matter of:)
)
) ISCR Case No. 23-01978
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, 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 10, 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 November 2, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2024.

The hearing was convened as scheduled on August 22, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 6, without objection. Applicant did not provide documentary evidence for admission. I received a transcript (Tr.) of the hearing on August 29, 2024.

Findings of Fact

Applicant is a 36-year-old employee of a government contractor for whom he has worked since March 2022. He was married from March 2016 until a divorce in February 2022. He remarried in October 2023. He has no children. He earned a high school diploma in 2006 and took a semester of college courses. He served on active duty in the Army from October 2016 until April 2017, when he was discharged through an entry-level separation. (Tr. 22-30, 61-63; GE 1, 2)

In the SOR, the Government alleged that Applicant has 15 delinquent debts totaling approximately \$22,000 (SOR ¶¶ 1.a through 1.o). These delinquencies consist of: employer training expenses (SOR ¶ 1.a); telecommunications debts (SOR ¶¶ 1.b and 1.o); credit cards (SOR ¶¶ 1.c, 1.h, 1.i); a personal line of credit (SOR ¶ 1.f); a utility (SOR ¶ 1.g); medical debts (SOR ¶¶ 1.j and 1.k); an automobile loan (SOR ¶ 1.l); a federal tax debt (SOR ¶ 1.m), and a loan for home furnishings (SOR ¶ 1.n). He admitted the SOR allegations except for the allegations in SOR ¶¶ 1.l and 1.m, which he denied. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's September 2023 and March 2023 credit reports. (SOR; Answer; GE 5, 6)

The employer training debt in SOR ¶ 1.a for \$8,480 is not resolved. Applicant was charged this money in about 2017 when he did not continue to work for his employer long enough to pay the training fees for his commercial driving license (CDL). He claimed that he stopped working for this employer because they failed to provide him with a training instructor, so he was not getting paid and had to find another job. He has known that his former employer has been trying to collect this money since 2018. He contacted the employer and the collection agency in 2018 to try to resolve the issue, but he was unable to do so. It is unclear whether he disputed the debt with his former employer or the credit reporting agencies. His plan is to eventually pay the debt if he has to. (Tr. 30-35; Answer; GE 6)

The telecommunications debt in SOR ¶ 1.b for \$4,287 is not resolved. In about 2018, Applicant and his ex-wife switched cell phone carriers. The new carrier provided them money to pay off any charges remaining under their old carrier's service contract, but they did not use the money for that purpose. The debt has been delinquent since about 2020. He has not taken any resolution action with respect to this debt. (Tr. 35-37; Answer; GE 1, 2, 4, 6)

The credit-card debt in SOR ¶ 1.c for \$1,068 is not resolved. Applicant opened this account in 2021 and the last payment he made was that same year. Without corroborating paperwork, he claimed that he filed a dispute with the credit reporting agencies because he did not agree with one or more of the dates listed on the credit report. He believes that the dates listed on some of his credit reports show the date the account was turned over to the collection agency as the date it was opened. He claimed that his dispute was "successful." However, he acknowledged owing the money. He also acknowledged that he owed the other SOR debts on which he claimed errors regarding the dates on credit reports, even if those errors resulted in the debts being removed from his credit reports.

Other than his dispute about the date the account was opened, he has taken no action to resolve this debt. (Tr. 37-44; Answer; GE 1, 2, 4-6)

The debt in SOR ¶ 1.d for \$672 is not resolved. Applicant cannot recall the nature of this account. He has known that is has been delinquent since at least May 2023, but has taken no action to resolve it. (Tr. 44-45; Answer; GE 1, 2, 4-6)

The debt in SOR ¶ 1.e for \$571 is not resolved. Applicant cannot recall the nature of this account. He initially testified that he had taken no action to resolve it, but then claimed he has a payment arrangement that he entered into with the creditor a few months ago. He claimed that he has made one or two monthly payments of between \$45 and \$48. He did not provide any documentary evidence of this payment arrangement or payments made. (Tr. 45-50; Answer; GE 2, 4-6)

The credit line in SOR ¶ 1.f for \$420 is not resolved. Applicant opened this account in 2019 and became delinquent on it that same year. He has taken no action to resolve it. (Tr. 50-51; Answer; GE 1, 2, 4-6)

The utility debt in SOR ¶ 1.g for \$411 is resolved. Applicant paid the account through his debit card several months ago and is waiting on a letter from the creditor that states the account has been paid in full. (Tr. 51-53; Answer; GE 1, 2, 4, 6)

The credit-card debt in SOR ¶ 1.h for \$333 is not resolved. Applicant became delinquent on the account by March 2019. He has taken no action to resolve the account (Tr. 18-20, 54-55; Answer; GE 1, 2, 4-6)

The credit-card debt in SOR ¶ 1.i for \$311 is not resolved. Applicant is unsure when he became delinquent on this account. He has taken no action to resolve the account. He claimed he will try to pay this account before the end of September. (Tr. 55-56; Answer; GE 2, 4-6)

The medical debts in SOR ¶¶ 1.j and 1.k for \$188 and \$87, respectively, have not been resolved. Applicant incurred these debts some time ago when he had to go to the emergency room. He has taken no action to resolve these accounts, but he claimed he will do so, soon. (Tr. 56-57; Answer; GE 1, 2, 4, 6)

The automobile loan in SOR ¶ 1.l that was delinquent in the amount of \$846 with a total loan balance of \$14,057 has been resolved. Applicant became delinquent on this debt in mid-to-late 2023 when automatic payments on the loan stopped coming out of his account for an undisclosed reason. In early 2024, after some back and forth with the creditor, it offered to settle the account for a lump sum payment of \$3,700. Applicant paid the \$3,700 in early 2024 and is in possession of the title for the vehicle that secured the loan. (Tr. 18-20, 58-61; Answer; GE 2, 4-6)

The federal tax debt in SOR ¶ 1.m has not been resolved. This tax debt accrued in tax years (TY) 2016 and 2017, and he became aware of the debt in early 2017. In 2017, his ex-wife set up a payment arrangement with the IRS through automatic monthly

deductions of about \$150 from her individual bank account. At some point, these automatically deducted payments stopped, and Applicant does not know why. He does not know how many payments they made pursuant to this 2017 payment arrangement. He began receiving notices from the IRS that these \$150 payments were not being made in about December 2019. He does not currently have a payment arrangement with the IRS. He has reduced this tax debt through forfeitures of his income tax refunds in TYs 2019, 2020, and 2021. He received tax refunds for TYs 2022 through 2024 that the IRS did not seize. He made two voluntary \$100 payments in around September 2023. Since 2017, he has paid down the IRS tax debt from about \$9,675 to about \$5,665. He provided documentary evidence of the lower balance in the form of screen shots from the IRS website. He claimed that he will begin to make payments again towards his IRS debt. (Tr. 18-20, 61-76; Answer; GE 3)

The home furnishing debt in SOR ¶ 1.n for \$3,151 is not resolved. Applicant opened this account in 2016 and became delinquent on the account that same year. In around 2016, he attempted to have the creditor reclaim the furniture, but it did not. He has taken no other action to resolve the account. (Tr. 76-77; Answer; GE 1, 2, 4-6)

The telecommunications debt in SOR ¶ 1.o for \$1,840 is not resolved. In about 2016, Applicant and his ex-wife switched cell phone carriers. The new carrier provided them money to pay off any charges remaining under their old carrier's service contract, but they did not use the money for that purpose. He became aware of the debt in about 2017. The only action he has taken to resolve this debt is to discuss with his ex-wife the possibility of splitting the debt, but she did not agree to it. He has not contacted the creditor to try to resolve it. (Tr. 77-78; Answer; GE 1, 2, 4-6)

In May 2023, Applicant completed a personal financial statement (PFS). He wrote that he had a net remainder of about \$1,153 at the end of each month. At the hearing, he testified that his current net remainder is about \$900. He claimed that combined, he and his wife have about \$2,500 to \$3,000 in savings at the end of the month. He will be receiving a wage increase, but he is not sure how much the increase will be. He and his wife spent \$15,000 to \$20,000 on their October 2023 wedding. He and his wife do not follow a written budget. He and his wife have thought about taking financial counseling but have not done so. He attributes his financial issues to irresponsibility, his divorce, and job changes. He claimed that he will pay all of his delinquent debts. (Tr. 79-92; GE 3)

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 15 delinquent debts totaling about \$22,000. One of those debts is a delinquent federal tax debt. Many of the delinquent accounts are several years old. 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 delinquencies are recent and ongoing. With the exception of two of his fifteen SOR debts, he has not provided sufficient evidence that he has resolved or is resolving those debts. Although he has reduced the balance of his federal tax debt, he does not have a current payment arrangement with the IRS and has not made a voluntary payment to it in about a year. 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 financial irresponsibility. These causes are both beyond and within his control. Regardless, because he has not provided sufficient evidence that he has attempted to resolve his debts, he has not shown that he acted responsibly under the circumstances with respect to these debts. That fact that he spent \$15,000 to \$20,000 on a wedding while he had these delinquencies is indicative of financial irresponsibility. AG ¶ 20(b) does not apply. The lack of evidence of resolution of his SOR debts and the significant amount of money he spent on a wedding also means that AG ¶ 20(d) does not apply.

Any disputes that Applicant had regarding the dates his SOR accounts were opened on his credit report were superficial, and they do not alter his responsibility to pay those financial obligations. His potential dispute with respect to the legitimacy of the debt in SOR ¶ 1.a, while reasonable, is not substantiated by documents containing the terms of the contract whereby he was obligated to pay back his training fees for his CDL. Moreover, he has not tried to resolve this issue since 2018. 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 brief 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.o:	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