



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-02166
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

02/29/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s unsupported evidence in mitigation is insufficient to overcome the security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On December 14, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) for security clearance eligibility so that he could work for a defense contractor. On November 9, 2021, the Defense Counterintelligence Security Agency (DCSA) could not make the necessary affirmative finding to grant Applicant’s security clearance and issued a Statement of Reasons (SOR) to him detailing security reasons under the financial considerations guideline (Guideline F). The action was taken under Executive Order (E.O.) 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) effective in the DOD on June 8, 2017.

On January 13, 2022, Applicant provided an answer to the SOR. He elected to have his case decided on an administrative (written) record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant on April 24, 2023. He received the FORM on May 17, 2023. The Government advised Applicant that, in his response, he could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. DOHA received Applicant's response (statement) to the SOR on June 30, 2023. On July 3, 2023, Department counsel indicated that he did not object to Applicant's statement. The case file was assigned to me on September 28, 2023.

Findings of Fact

The SOR contains 30 delinquent accounts totaling approximately \$86,000. About \$4,600 of the total debts are medical accounts. Applicant denied all the student loan accounts because he graduated in 2018 and the student loans have been on pause since March 2020. He disputed SOR ¶¶ 1.r and 1.u allegations claiming he was a victim of a type of identity theft with someone converting his Social Security Number. He acknowledged the medical accounts and most of the remaining debts. He contended that he intended to pay them but did not explain how.

Applicant is 28 years old and was single. He has been living with his girlfriend since 2019, and apparently married her. The recent birth of Applicant's daughter has made him pay more attention to his financial responsibilities. (June 2023 response to FORM)

In June 2013, Applicant received a high school diploma. In April 2018, he earned a bachelor's degree. He has never been investigated for a security clearance. He has been working for a security company since April 2023. Before his current job, he worked as a delivery driver, a security guard, and a waiter. He was unemployed from August 2013 to January 2018 while he attended college. (Item 3 at 7-32; June 2023 response to FORM)

After graduating from college in May 2018, Applicant returned to his mother's home to help her with her financial difficulties related to raising his four younger brothers. His presence did not help much because she was evicted from her apartment within a short time and, while assisting his family, Applicant regrettably ignored his car payments, resulting in his car getting charged off. (Item 3 at 32-34)

All the student loan accounts listed at SOR ¶¶ 1.a to 1.p defaulted between 2013 and 2017. The basis for Applicant's denials of all the student loan accounts was that they were placed on a Federal Government pause in March 2020, which meant that he did not have to make payments on the accounts. The six commercial accounts became delinquent between December 2014 and September 2020. The eight medical accounts became past due between May 2018 and August 2020. See credit bureau

reports at Items 4 (September 2022), Item 5 (September 2021), and Item 6 (January 2021).

In Applicant's June 2023 response to the FORM, he stated he had negotiated a payment plan with the creditors at SOR ¶¶ 1.q, 1.r, and 1.aa through 1.dd. Applicant submitted no documentary proof that plans exist or that he has made payments under any of the plans. His claim of paying an insurance company (non-SOR account) carries no probative weight because there is no independent evidence to support his claim. (June 2023 response to FORM)

Applicant's mother has had financial difficulties over the last 13 years in raising Applicant's four brothers who are ages 18 to 23. After he graduated from college in May 2018, he has provided consistent help to his mother in raising his four younger brothers. It took his mother three years (2021) to find a job with satisfactory earnings. Applicant has found security in his current career and is better prepared to provide for his family even with his wife's pregnancy problems causing her to be unemployed for a year. The past periods of unemployment have caused strife in Applicant's life. However, his current job will provide him with an opportunity to improve his financial situation. (June 2023 response to the FORM)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel. . ." In a decision that is made on the record, it is the Applicant's responsibility to furnish evidence, i.e., payment receipts, bank statements, documented payment plans, to support his claims of establishing payment plans or making payments to the creditors or collection agencies. The applicant has the ultimate burden of persuasion in seeking a favorable security clearance decision.

Analysis

Financial Considerations

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

A security clearance holder occupies a fiduciary interest with the Government based on trust, reliability, and good judgment. The Government must have the trust in a person to reliably comply with all security rules and regulations at all times and in all places. An excellent way to determine whether an applicant will uphold the high standards of possessing a security clearance is how he addresses issues in his personal life, particularly his financial matters. The record shows that Applicant has 16 delinquent student loan accounts, six delinquent commercial accounts, and eight delinquent medical accounts. The total monetary amount of past-due accounts is approximately \$86,000. There has been no documented change in the amount or number of the accounts since November 9, 2021, when the SOR was published. Applicant was aware of at least several of the debts when he signed and certified his December 2020 e-QIP. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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;

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

(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.

Several of the accounts became delinquent in 2013 and 2014. However, other accounts fell delinquent in 2020 and 2021. The lack of documented action to address the accounts or advise the creditors of Applicant's ongoing financial troubles, continues to cast doubt on his reliability, trustworthiness, and good judgment. It seems reasonable to expect an applicant to provide evidence to support his claims regarding his past-due debts. See, i.e., ISCR Case No. 15-03365 at 2 (Appl Bd. Oct. 16, 2016) Applicant's veiled promises to pay his debts in the future does not replace a meaningful track record of payments. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). AG ¶ 20(a) does not apply.

The first prong of AG ¶ 20(b) partially applies because of Applicant's under employment as a delivery driver and a card monitor, and his unemployment while in college between 2013 and 2018, and his wife's unemployment during her recovery after the birth of their daughter. However, the overall benefit to Applicant under AG ¶ 20(b) is limited due to the lack of evidence of documented action to responsibly resolve the delinquent debts. AG ¶ 20(d), requiring a good-faith effort to repay creditors, is not available for mitigation either.

AG ¶ 20(c) is not applicable because Applicant has not received financial counseling and he has presented no independent evidence to indicate that he is restoring control over his delinquent debts.

Applicant's dispute of SOR ¶¶ 1.r and 1.u based on identify theft has not been established because he did not provide documentary proof of the dispute, and he provided no evidence of his attempts to resolve the issue. AG ¶ 20(e) cannot be applied.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 28 years old and is married with a young daughter. Though he is commended for trying to assist his mother and his brothers after he graduated from college in 2018, he exercised poor judgment in forsaking his own financial responsibilities. His claims of setting up payment plans is not credible because of the lack of documentation in support.

In Guideline F cases, the DOHA Appeal Board has held in a long line of cases that an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. *See, e.g.,* ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that he has a plan for debt resolution and has taken significant action to implement the plan. *See, e.g.,* ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented. Applicant has no plan in place and furnished no evidence of even sporadic payments on the medical. His promises to pay the delinquent debts are insufficient. *See, e.g.,* ISCR Case No. 14-04656 at 2 (App. Bd. Sep. 18, 2015). Having considered the entire record from an overall commonsense point of view, Applicant's ongoing financial struggles have not been mitigated.

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
Subparagraph 1.a-1.dd:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Applicant's application for a security clearance is denied.

Paul J. Mason
Administrative Judge