



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



In the matter of:)	
)	
)	ISCR Case No. 23-01774
)	
Applicant for Security Clearance)	

Appearances

For Government: George Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

10/16/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 30, 2022. On August 23, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant answered the SOR on August 28, 2023, and requested a hearing before an administrative judge. The case was assigned to me on June 10, 2024.

The hearing convened on August 20, 2024. Department Counsel submitted Government Exhibits (GE) 1-8, which were admitted in evidence without objection. Applicant submitted Applicant Exhibits (AE) A-E, which were admitted in evidence without objection. I held the record open for two weeks after the hearing to provide Applicant with the opportunity to submit additional documentation, and he submitted AE F, which was admitted without objection.

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 34 years old. He was married in 2011 and divorced in 2015. He remarried in 2022. He has three minor children. He earned a bachelor's degree in 2010. He works as a software engineer. He has a job offer with a government contractor which requires a security clearance. (Tr. 20-22; GE 1)

In 2017, Applicant moved to State A for work. He purchased a multifamily housing unit as an investment property. He intended to live in one unit and rent the others. After the purchase, he realized the property required more work than he originally assessed. He used his disposable income and maxed out his credit cards fixing up the housing unit. Since he knew he was eventually leaving State A, he wanted to make the rental units perfect, so he could rent them remotely. (Tr. 25-69)

As soon as Applicant moved in 2019, he had problems collecting rent from his tenants. He stopped paying his credit cards, mortgage, and other debts around that time. He claimed that after the start of the COVID-19 Pandemic, he was unable to collect rent from any of his tenants and was unable to evict them for two years. However, he provided no documentation supporting his claims. (Tr. 25-69)

In 2022, Applicant hired an attorney to evict the non-paying tenants, and he obtained new tenants. In March 2022, Applicant filed a Chapter 13 Bankruptcy on his own, but failed to file required documentation and attend a hearing, so it was dismissed the following month. At that time, he realized that the only way to prevent foreclosure and loss of his investment was to sell the housing unit. He hired a real estate agent to arrange a short sale of the housing unit. He thought the bank would quickly approve the short sale, so he told his tenants they didn't have to pay rent while the short sale was pending. The short sale approval took about two years. Applicant's mortgage and debts continued to remain unpaid during this period. The short sale was finally approved in March 2024, and sold in April 2024. He admitted that he did not claim the loss of rental income on his taxes because he was "lazy". (Tr. 25-69; GE 8)

The SOR alleges a Chapter 13 bankruptcy that was dismissed, ten delinquent debts totaling about \$27,000, and a mortgage arrearage. The status of the allegations are as follows:

SOR ¶ 1.a alleges the Chapter 13 Bankruptcy filed in March 2022, which was dismissed in April 2022. Applicant failed to file the proper paperwork and attend a hearing. He filed the case himself, despite lacking the expertise to do so. (Tr. 25-69; GE 5)

SOR ¶ 1.b is an auto loan in collection for \$8,846. The vehicle was repossessed when he stopped paying his debts in 2019. This debt remains unresolved. (Tr. 25-69; GE 2, 3, 4)

SOR ¶¶ 1.c, 1.d, 1.f, 1.g, 1.h, and 1.i allege delinquent credit card accounts in collection, for \$4,314, \$3,752, \$2,297, \$2,202, \$1,188, and \$1,063, respectively. Applicant used these credit cards to fix up the rental property. He admitted he stopped paying these debts in 2019, and they remain unresolved. (Tr. 25-69; GE 2, 3, 4)

SOR ¶ 1.e alleges a cellular phone account in collection for \$2,744. This debt is for canceling his service and the cost of three phones. This debt is unresolved. (Tr. 25-69; GE 2, 3, 4)

SOR ¶ 1.j alleges an insurance account in collection for \$615. This debt is unresolved. (Tr. 25-69; GE 2, 3, 4)

SOR ¶ 1.k alleges a utility account in collection for \$274. This debt is unresolved. (Tr. 25-69; GE 2, 3, 4)

SOR ¶ 1.l alleges a mortgage account past due for \$65,000 with a total balance of \$278,925. Applicant provided documentation that a short sale was approved for \$190,000 in March 2024. This was about \$90,000 less than the mortgage owed. The documentation states that the bank will not pursue a deficiency but will issue a 1099-C – Cancellation of Debt and Applicant will be responsible for the tax consequence. (Tr. 25-69; GE 2, 3, 4, 6, 7; AE A, C, F)

Applicant earns about \$180,000 annually in his current job, and has only about \$3,000 of monthly expenses, with about \$8,000 of a monthly remainder. He uses that remainder to bolster his savings and fix up his current home. He recently purchased a fence and has made other home upgrades. He spent \$5,000 in July 2024 to advertise a book he self-published. He has not earned a profit on this book, or an earlier book he published in 2013. He is still interested in real estate investment, however, he acknowledged that he is a bad investor. He has not had credit counseling. (Tr. 34-73; AE D)

When asked about other expenses, Applicant reported he travels frequently to play in tournaments of a Japanese manga card game. For the last 20 years, he has traveled to different cities, in the U.S. and internationally, to play in the tournaments. He spends thousands of dollars at a time on travel and card decks. On occasion, he would travel as frequently as monthly for these tournaments. Although tournaments were cancelled during the pandemic, he traveled to two tropical overseas locations for tournaments in 2022. He estimated that he spends at least \$2,000 a month on this hobby. (Tr. 34-69)

Applicant's August 2024 credit report shows additional debts that were not alleged in the SOR. These include a delinquent cellular phone debt for \$1,498, a medical collection debt for \$1,249, and 2019 personal loan debt for about \$13,000 that all remain

unpaid. He is also unsure of the status of his 2018 federal income tax return, as the initial filing was not processed completely. None of these financial issues were alleged in the SOR but will be considered in the whole person analysis. (Tr. 34-69; GE 4; AE B)

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes 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.

The financial considerations security concerns are established by the credit reports and Applicant’s admissions. AG ¶¶ 19(a) and 19(c) apply.

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; 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.

None of the mitigating conditions apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts are being paid, are resolved, or became delinquent under circumstances that are unlikely to recur. His failure to pay these debts is both long-term and recent, as well as ongoing and unresolved. His behavior continues to cast doubt on his current reliability, trustworthiness, and judgment.

Applicant did not provide sufficient evidence to find that his financial problems were due to conditions beyond his control or that he acted responsibly under the circumstances. Applicant's failure to collect rent at various times, claim the loss on his taxes, overspending on the investment property, and his frivolous spending habits contributed to his financial problems. His credit report shows new delinquent debt, and he is unsure if one of his tax filings from several years ago is resolved.

Applicant admitted that he has made poor financial decisions. He has sufficient income to make payment arrangements on some of his debts, but instead he has prioritized other expenses such as improvement projects for his current home, travel, and his hobbies. Since 2019, repaying his delinquent debts have not been his priority. He has not demonstrated responsible or reliable behavior with respect to his finances.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to 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.i:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge