



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



In the matter of:)
)
) ISCR Case No. 23-01010
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro Se*

05/21/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 31, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 15, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on February 5, 2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 8. (Item 1 is the SOR) Applicant did not submit

a response to the FORM or object to the Government's documents. Items 2 through 8 are admitted into evidence. The case was assigned to me on April 30, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He earned an associate degree in 2009. He also earned other college credits, but not a degree. He served on active duty in the military from May 1995, until he was honorably discharged in June 2002. He served in the active reserve from November 2012 to June 2020 and was honorably discharged. He married for the fourth time in 2019. He has three children ages 33, 24 and 20. In his April 2021 security clearance application, he disclosed he began working for his present employer, a federal contractor, in March 2021. He did not disclose any period of unemployment after 2015.

The SOR alleges five delinquent debts totaling approximately \$23,175 that are corroborated by Applicant's admissions in his answer to the SOR, responses to interrogatories, statements to a government investigator, and credit reports from August 2022, January 2023, September 2023. (Item 2, 3, 4, 5, 6, 7, 8)

Applicant disclosed on his April 2021 security clearance application (SCA) that he had been counseled for the misuse of an employer's credit card in April 2020. He reported the misuse was due to "financial hardship to pay balance of the card." The balance was \$4,100. He reported he had a payment plan in place and stated: "\$395 monthly deduction." He reported he was using a financial counseling service that provided guidance on debt reduction and money management. He said, "Through this company I was able to consolidate my debt and pay off debt in full by end of the terms." In his SCA, he disclosed he had six delinquent debts. One was resolved and the others were being paid through a debt consolidation plan. He said the debts would be paid in full at the end of the contract. No other information was provided to determine if he completed the payments. He attributed these delinquencies to the pandemic and his wife not working. In the "Additional Comments" section of the SCA, he stated:

My original SF 86 contained outlines of how I was to accomplish my goals of becoming debt free. Over time I have been able to accomplish this and obtain a Top Secret SCI clearance. I am a trustworthy candidate possessing the positive character and traits our Government is looking for. Due to Covid and now being the sole provider in my home, I have incurred additional debt. I have a plan to rid this debt as I have in the past. I will have all debt cleared by August 2021. (Item 3)

Applicant was interviewed by a government investigator in May 2021. He was questioned about the misuse of his travel credit card and told the investigator that in about 2019 he had used it for authorized purchases, but when the bill became due, he was unable to pay it because he had child support payments, and he did not have enough money remaining to pay the credit card balance. He was permitted to set up a repayment

plan of \$395 a month, and he estimated it would be completely paid in July or August of 2021. He also told the investigator that he was no longer using the financial counseling service he had been using to help him consolidate and pay his delinquent bills as he stated in his SCA. Instead, he was paying the bills on his own. (Item 8)

Applicant was confronted by the investigator with the debt alleged in SOR ¶ 1.e. He admitted this debt was for a vehicle repossessed in December 2020. He intended to pay the debt in full by November 2021. He had other debts that he was confronted with, and he said he would investigate their legitimacy and repay them if they belonged to him. He attributed his financial issues to a divorce he was going through in 2018. He also explained that his child support requirements would be terminated after his children turned 18. (Item 8)

Applicant completed government interrogatories in December 2022. In them, he was confronted with the debts alleged in SOR ¶¶ 1.b through 1.e and others. He responded that for the debt in SOR ¶ 1.b that he had a payment arrangement with the creditor but was not making payments. For the debt in SOR ¶ 1.c, he had not paid it and had not made payment arrangements; for ¶ 1.d, he said it was paid, but no documentation was provided; and for ¶ 1.e, he said he had not paid the debt and had no payment arrangement. (Item 4)

In his interrogatories, Applicant provided an explanation stating that he was in the process of paying all the listed debts either in their entirety or by payment arrangements. He intended to make \$100 monthly payments on some debts beginning in February 2023 and others he was disputing with the creditors. He further stated:

These debts that were incurred by me are a result of being the sole provider as my wife whom paid half of our bills no longer can work due to physical limitations from cancer. I will have all of the listed debts cleared in full by December 2023. (Item 4)

Included with Applicant's responses to interrogatories was a personal financial statement. Under the section for the disclosure of debts there were none reported and there were no budget items to show any debt payments were being made or were part of his budget. He listed a net remainder of income at the end of the month to be \$1,080. (Item 4)

In Applicant's answer to the SOR he stated:

My original SF 86 contained detailed outlines of how I was to accomplish my goals of becoming debt free. Over time I have been able to accomplish this and obtain a Top-Secret SCI clearance. I am a trustworthy employee possessing positive character traits our government is looking for. Due to Covid and now being the sole provider in my home, I have incurred additional debt. I have a plan to rid this debt as I have in the past. I will have all debt cleared by the beginning of August 2024. (Item 2)

For the debts in SOR ¶¶ 1.a (\$2,416 for 48 months), 1.b (\$2,235 for 46 months), and 1.d (\$472 for 9 months), Applicant said he had made payments arrangements with

each creditor for \$50 payments per month. For the debts in SOR ¶¶ 1.c (\$1,380 for 35 months) and 1.e (\$16,562 for 165 months) he said he had also made payment arrangements of \$40 and \$100 a month, respectively. He did not provide any documentary evidence with his SOR answer that the payment plans were accepted by the creditors. He provided telephone numbers for each creditor and some with names of people he presumably spoke with. He did not provide any documentary evidence that he has been making each monthly payment. It is unclear how he intends to have all of his delinquent debts repaid by August 2024 based on his own plans as all but one plan extends beyond that time. (Item 2)

In the FORM, the Government stated in bold print: "**Applicant has not yet submitted any documentation in support of his actions or that will corroborate the statements and assertions he makes in his Answer.**" The Government reiterated this to Applicant again in the FORM stating in bold: **It is Applicant's responsibility to provide documentation in support.**" Applicant did not provide a response to the FORM or any evidence that he has payment agreements with the creditors or that he has been making consistent payments.

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions and in a whole-person analysis.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. 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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(b) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant admitted he owed the delinquent debts alleged in the SOR, which total approximately \$23,175. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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.

Applicant admitted he owes all the debts alleged in the SOR. He attributed his financial problems to the pandemic, a divorce, and later his wife being unable to work. These were conditions beyond his control. He reported he started working for his new employer in March 2021. He completed his SCA in April 2021 and stated he would have his delinquent debts repaid by August 2021. In May 2021, he told the government investigator that he would pay the debt in SOR ¶ 1.e by November 2021, and he was investigating the legitimacy of the other debts brought to his attention. In his December 2022 interrogatory responses, he admitted the debts alleged and said he had paid one, had a payment plan for another, but had not made payments, and had no payment agreements or payments for two other debts. He said he was in the process of paying all the listed debts either in their entirety or by payment arrangements. He intended to make \$100 monthly payments on some debts beginning in February 2023 and others he was disputing with the creditors. In his answer to the SOR, he said he had a plan to resolve

his debts as he had in the past and all his delinquent debts would be cleared by the beginning of August 2024. It has been three years since Applicant made promises to resolve his delinquent debts. He has not provided evidence to show that in those three years he has made any payments towards any of the debts alleged.

Applicant's debts are recent and ongoing. Although initially his debts may have been beyond his control, he has a history of financial problems, and he has not acted responsibly. Despite repeated inquiries for him to provide documentary evidence that he is addressing and paying his debts, he has failed to do so. It appears his children are all over age 18 and it is unknown if he still has child support obligations. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about any action he may have taken in the past three years; if he is still paying child support; other questions about his history of financial issues; or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). AG ¶ 20(a) does not apply. AG ¶ 20(b) has minimal application.

Applicant indicated in his SCA that he participated in some type of financial guidance or counseling. It is unknown what type of service this was. There are not clear indications Applicant's financial problems are being resolved or are under control. There is no evidence that he has made good-faith attempts to resolve his delinquent debts. Although he stated he was disputing some debts, he then admitted he owed the debts alleged. AG ¶¶ 20(c), 20(d), and 20(e) do 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 the 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.

