



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



In the matter of:)
)
) ISCR Case No. 23-00658
)
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro Se*

01/05/2024

Decision

HOGAN, Erin C., Administrative Judge:

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

Statement of the Case

On May 10, 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 responded to the SOR on May 31, 2023, and requested a decision on the written record in lieu of a hearing.

The Government's file of relevant material (FORM) was submitted on June 22, 2023. Applicant received a copy of the FORM on July 7, 2023. He was given 30 days from receipt of the FORM to file objections and submit material to refute, extenuate, or mitigate the security concerns. He timely responded to the FORM. Department Counsel did not object to his response. The case was forwarded to the DOHA Hearing Office on September 1, 2023, and assigned to me on November 3, 2023. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is 50 years old. He has been employed by a defense contractor since 2018. He worked for prior defense contractors before his current position. He served on active duty in the U.S. Army from 1996 to 2000. He received an honorable discharge. His highest level of education is a Masters in Business Administration. He is divorced and has two adult children. He remarried in 2018. (Item 2; Item 3)

On September 24, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing in order to apply for a security clearance. In response to Section 26 - Financial Record, he listed no delinquent or charged-off accounts. A subsequent background investigation revealed that Applicant had four accounts that were charged off or placed for collection. (Item 2 at 32-34) The SOR alleges four debts; a \$14,379 charged-off credit card account (SOR ¶ 1.a: Item 4 at 2; Item 5 at 9); a \$12,104 charged-off credit card account (SOR ¶ 1.b: Item 4 at 2; Item 5 at 5); a \$5,134 charged-off credit card account (SOR ¶ 1.c: Item 4 at 3; Item 5 at 5); and a \$2,245 medical account placed for collection. (SOR ¶ 1.d: Item 4 at 3; Item 5 at 2).

In his response to the SOR, Applicant denied the debts alleged in SOR ¶¶ 1.a -1.c and admitted the debt alleged in SOR ¶ 1.d. In response to the FORM, Applicant denied the debt alleged in SOR ¶ 1.a because he claims his ex-wife was responsible for the debt in the divorce property settlement. He attached a copy of the property settlement which verifies this. (Item 1; Response to FORM, Final Divorce Order, dated October 6, 2017, at 5.)

Applicant claims the \$12,104 charged-off account in SOR ¶ 1.b became delinquent as a result of the divorce. He is listed as being responsible for this debt in the divorce property settlement. He claims his ex-wife never paid him \$18,000 for his share in the family home per their property settlement agreement so the debt was not paid. He also claims he could not pay the \$5,134 debt alleged in SOR ¶ 1.c for the same reason. He disputes the medical debt alleged in SOR ¶ 1.d, because he claims he never received the care that was charged. (Response to FORM, Final Divorce Order at 5.) All of the debts alleged in the SOR are listed as delinquent on the most recent credit report in the file, dated May 1, 2023. (Item 5 at 2, 4, 5, 9)

About three years ago, Applicant was approved for a Veteran's Administration loan for a mortgage on his current home. (Response to FORM) Applicant did not provide additional information about his monthly budget.

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 has a history of financial problems. He incurred four debts totaling approximately \$33,000 that were charged off or placed for collection. The evidence is sufficient to raise the above disqualifying conditions.

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;
- (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.

None of the mitigating conditions fully apply. The debts remain outstanding. While AG ¶ 20(b) partially applies due to Applicant's divorce being a circumstance beyond his control, I cannot conclude Applicant acted responsibly under the circumstances. While he claims his ex-wife was responsible for the debt alleged in SOR ¶ 1.a, the debt remains in his name. Creditors are not a party to divorce settlements. In the creditor's eyes, he remains responsible for the debts. He took no steps to resolve any of the debts alleged in the SOR. Nor did he take action against his ex-wife to enforce the property settlement. Regardless of the property settlement, three of the four debts were his responsibility to pay and he failed to take action towards resolving these accounts.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's delinquent debts are not fully mitigated.

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 and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

