



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



In the matter of:)
)
) ISCR Case No. 23-00756
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro Se*

02/13/2024

Decision

KATAUSKAS, Philip J., Administrative Judge

Applicant did not provide sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations. Eligibility is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on December 2, 2021, in connection with his employment by a defense contractor. On June 13, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4) National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

On July 14, 2023, Applicant submitted an answer to the SOR (in handwriting on the SOR) (Answer) and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On August 31, 2023, Department Counsel submitted the Government's

File of Relevant Material (FORM), including documents identified as Items 1 through 6. On September 5, 2023, the FORM was mailed to Applicant. Applicant received the FORM on October 2, 2023. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted no response. Government Item 1, the SOR and the Answer, collectively, are the pleadings in the case. Items 2 through 6 are admitted without objection. The case was assigned to me on January 4, 2024.

Findings of Fact

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact:

Applicant is 29 years old and was married from August 2014, until he divorced in February 2015. He has no children. In his SCA, he reported having a cohabitant since June 2019. In his personal subject interview (PSI), he reported having a spouse. (Items 2 and 3.) He served on active duty in the U.S. Navy from August 2012 to May 2018. His discharge was Other Than Honorable for a Pattern of Misconduct. He reported a period of unemployment from May to June 2018 and from October 2018 to February 2019. Since February 2019, he has worked for a defense contractor. (Item 2.)

Under Guideline F, the SOR alleged that Applicant has nine delinquent accounts totaling \$44,451. (Item 1.) He admitted all allegations except for SOR ¶ 1.f (\$26,991). The SOR accounts are noted as delinquent on one or more credit reports. The accounts on average became delinquent in 2016. (Items 3 - 6.)

As noted, Applicant denied SOR ¶ 1.f, a charged-off account for \$26,991. With his Answer, he submitted a document showing an account "Paid, was a charge-off," dated October 12, 2022. The document is illegible in that it does not show the amount owed, the amount paid, or the account number. It does, however, show the creditor identified in the SOR, and the only account of the nine in the SOR is owed to this creditor. In addition, the earliest credit report identifies that creditor and an amount due matching the amount in the SOR. Finally, the two latest credit reports show a zero balance due on that account. This account has been resolved. (Answer.)

In his PSI, Applicant discussed SOR ¶¶ 1.a (\$8,409), 1.c (\$4,844), and 1.h (\$1,500). The PSI reported that these accounts became delinquent due to unemployment and that he was including those accounts in a debt-consolidation program. At that time, he did not have any documentation showing that those accounts had been enrolled in such a program. (Item 3.) He has not provided any evidence of payment arrangements or payments on those three delinquent debts. These accounts have not been resolved.

In his PSI, Applicant discussed SOR ¶¶ 1.b (\$5,226), 1.e (\$400), and 1.i (\$4,398). He claimed that he had contacted a lawyer to dispute SOR ¶ 1.b. He also claimed that he had a payment arrangement with the SOR ¶ 1.e creditor. Finally, he claimed he intended to dispute SOR ¶ 1.i. He was given five days to provide documentation to support those claims. He subsequently failed to provide any such documentation. (Item 3.) Nor did he

provide any supporting documentation with his Answer. These accounts have not been resolved.

Applicant admitted SOR ¶ 1.g. (past due \$183/bal. \$706). That account was not discussed during Applicant's PSI. (Item 3.) That account has not been resolved.

In his PSI, Applicant discussed his personal finances. His and his spouse's monthly income are almost equal. His monthly income is \$7,300. His 50% share of their monthly expenses is \$1,725. Thus, his individual monthly net remainder is \$5,575. (Item 3.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available and 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F Financial - Considerations

The security concern relating to Guideline F 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).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The followings conditions are applicable in this case:

(b) unwillingness to satisfy debts regardless of the ability to do so; and

(c) a history of not meeting financial obligations.

The SOR debts are established by Applicant's admissions and the Government's credit reports. He has a healthy monthly net remainder, and his debts became delinquent on average in 2016. Therefore, AG ¶¶ 19(b) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F 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, . . . divorce or separation), 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 ... and provides documented proof to substantiate the basis of the dispute

I have considered mitigating condition AG ¶ 20(a). Applicant's SOR debts went delinquent in about 2016, eight years ago. Although that is several years ago, six of those SOR debts remained delinquent in the past year. Because these same delinquencies persist, they may not be considered "so long ago." They are, therefore, recurring and are not mitigated by AG ¶ 20(a).

I have considered mitigating condition AG ¶ 20(b). AG ¶ 20(b) has an initial requirement. That is, an applicant's financial problems must have been the result of conditions "largely beyond" his control. That condition also has a second requirement, that an applicant act responsibly in light of those conditions. Applicant had a period of unemployment from October 2018 to February 2019 that he claimed caused financial problems reflected in SOR ¶¶ 1.a, 1.c, and 1.h. Those were to be enrolled in his debt-consolidation program. But he failed to provide proof of any such enrollment. That failure is not responsible conduct in addressing his adversity. AG ¶ 20(b) does not apply.

I have considered mitigating condition AG ¶¶ 20(d) and (e). During Applicant's PSI, he expressed plans to enter into payment arrangements with four SOR creditors. (SOR ¶¶ 1.a, 1.c, 1.h, and 1.e.) He also expressed his intention to dispute two SOR debts. (SOR ¶¶ 1.b and 1.i.) He was given the opportunity to document those claims, but he did not do so. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). It is Applicant's burden to mitigate established security concerns. He has not established that those debts have been resolved.

SOR 1.f has been resolved under AG ¶ 20(d).

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g - 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge