



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



In the matter of:)
)
) ISCR Case No. 23-01690
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro Se*

10/02/2024

Decision

MURPHY, Braden M., Administrative Judge

Two old delinquent debts remain outstanding. Applicant did not provide sufficient evidence to mitigate the resulting financial security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 27, 2023. On August 17, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DCSA CAS issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 28, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on May 22, 2024. On June 10, 2024, following consultation with the parties, DOHA issued a notice scheduling the hearing for July 16, 2024. The hearing was to take place virtually through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 4. Applicant testified and submitted documents he marked as Applicant's Exhibits (AE) 1 through 4. All of the exhibits were admitted without objection. I left the record open until July 31, 2024, to allow Applicant the opportunity to submit additional information. He timely submitted four documents by e-mail. They included a pay stub, a personal financial statement (PFS), his DD-214 certificate of discharge from active duty, and a reference letter. These documents, AE 5 through 8, are all admitted without objection. DOHA received the hearing transcript (Tr.) on July 24, 2024. The record closed on July 31, 2024.

Findings of Fact

Applicant admitted the three debts in the SOR (§§ 1.a, 1.b, and 1.c), with explanations and a narrative statement. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 38 years old. He lives in State 1. He served in the U.S. Marine Corps on active duty from 2004 to 2009 and was discharged honorably as a corporal (E-4). He served in combat in Iraq. He earned an associate degree in 2018 and a bachelor's degree in 2020. During college, he worked as an engineering intern and had a second job at a restaurant. He held similar restaurant jobs for several years previously (2011-2021). Since April 2021, he has been employed as an engineer with a large defense contractor. He married in June 2019 and divorced in May 2021. He has two daughters D1 and D2, ages 19 and 13, from prior relationships. (GE 1; AE 7; Tr. 47-48, 50-54, 85-86)

Applicant disclosed several delinquent debts on his January 2023 SCA, including child support and consumer debts. (GE 1 at 37-43) He discussed the debts at length during his background interview in April 2023. (GE 2) The SOR debts are established by credit reports in the record, from February 2023 and August 2023. (GE 3, GE 4) Applicant also provided a recent credit report, from July 2024. (AE 4)

SOR § 1.c is a \$350 past-due child support debt, owed to authorities in State 2. (GE 3 at 3, GE 4 at 5) Applicant documented a \$370 payment in September 2023 to bring the account current. (Answer; AE 3) A July 2024 credit report shows zero balance owed on the account. This account concerns child support for D2, now age 13, who lives with her mother. He is on a payment plan of about \$400 a month, taken out of his pay. The account is current and the debt is resolved. (Tr. 27-28, 39-41, 51-52, 75-76; AE 4 at 6)

SOR § 1.a (\$12,933) and 1.b (\$2,530) are two accounts with credit union 1 that have both been charged off. They are listed on credit reports from February 2023 and August 2023 (GE 3 at 2; GE 4 at 3, 4) but are not listed on the July 2024 credit report. (AE 4).

The account at SOR § 1.a concerns a repossessed car. The account has a last payment date of November 2016. The account at SOR § 1.b was opened in May 2016 with a last payment date of February 2017. (GE 4; Tr. 61) Applicant said he purchased the car in 2014 and refinanced it in 2016. The car was repossessed in 2017. He said he received a letter telling him the car was sold at auction. He received calls and notices

about the debts but did not respond because he could not afford to pay them. He prioritized having a place to live and pursuing custody of D1, his elder daughter. He listed debts on his SCA and discussed them in his background interview. He said he "redirected my money towards pursuing custody of my daughter," so he was not able to afford to pay on either account. (Tr. 36-38, 56-61; GE 1, GE 2; Answer)

Applicant attributes these debts to a variety of circumstances, including a career change, a custody battle, and a money dispute with a relative. These circumstances all began in 2015 or 2016, around the time he began pursuing a college degree. (Tr. 46-48)

In about 2016, Applicant learned or had reason to believe that M's boyfriend, T, was abusing D. He took time off from work and incurred significant expenses to pursue custody of D1. He retained lawyers, whom he paid with extra money from his GI Bill funds. (Tr. 32-35, 66-67; Answer)

Applicant said an allegation against T was first made in 2016. He said Child Protective Services (CPS) investigated and determined that it was not safe for D to be living with M and T. D was removed from the home and went to live with Applicant's father. Applicant continued to pay child support but became delinquent for a time. D returned to live with her mother in about 2018. (Tr. 30-31, 64-85) The first custody hearing was in 2019, and Applicant said his daughter preferred to stay with her mother. (Tr. 35, 38) AE 2 is a \$10,000 retainer fee that he paid to a law firm later in the custody battle, in about 2020. (AE 2; Tr. 26) T was ultimately charged criminally with sexual abuse of D1 and went to trial, in 2023. Applicant testified as a witness. (AE 1). He said that T was found not guilty. (Tr. 83)

Applicant stressed that he had no financial issues before he began pursuing custody of his daughter. He was making his payments responsibly and addressing his obligations. He also decided to change his career for a better work and family life balance. His career change led to a decline in income in about 2015. Before then, he was earning \$52,000 annually and could afford the car that was repossessed. (Tr. 46-50)

Applicant said he has not pursued resolution of the debts at SOR ¶¶ 1.a and 1.b, essentially because the debts were charged off and have now dropped off of his credit report, so he believed he was no longer responsible for them. He has not contacted the credit union to address the debts but said his during his testimony that he intends to do so. (Tr. 43-45, 60-62, 78, 94-95) He submitted no post-hearing evidence that he has pursued resolution of these debts.

Applicant no longer has an account with credit union 1. The account with that creditor that is listed on a current credit report is for a previous vehicle. (Tr. 41-42, 77; AE 4 at 9) He stressed that other than the two SOR debts, he has good credit, responsible spending habits, and ample savings. He earns just under \$100,000 annually and has no other income. According to his personal financial statement, he estimated a net monthly remainder of about \$200, after calculation of income and monthly expenses. (Tr. 67-71, 88-89; AE 5, AE 6) He has not participated in credit counseling. (Tr. 74) He said he has learned from his failed obligations of the past and recognizes the need for further financial education so he can address his obligations better in the future. (Tr. 50, 79-81)

A close friend provided a reference letter attesting to Applicant's character as a dedicated father, hardworking student, and employee. He shows perseverance, integrity, kindness, and reliability. (AE 8)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "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).

The adjudicative 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(a), the entire process is a conscientious scrutiny of several 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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

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).

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 incurred delinquent debts several years ago, while in school and while pursuing a custody battle over his daughter, whom he believed was being abused by her mother's boyfriend. A child-support account for his other daughter briefly became delinquent in 2023. The SOR debts are established by the credit reports in the record and by Applicant's testimony. AG ¶¶ 19(a) and 19(c) 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, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The small child-support debt (SOR ¶ 1.c) that was briefly delinquent in 2023 is now current and resolved. AG ¶ 20(d) applies.

The credit union debts at SOR ¶¶ 1.a and 1.b, became delinquent in about 2016 or 2017, when Applicant prioritized living expenses and pursuing child custody of his elder

daughter, D1, whom he believed was being abused by her mother's boyfriend. He hired attorneys to assist him. He also changed careers and pursued an education around the same time, which impacted his ability to pay the debts. They later became charged off. Once that occurred, Applicant took no action to address them because he did not believe he had a responsibility to do so (though he listed them on his SCA), and they now no longer appear on his credit report. Unfortunately, Applicant was incorrect. The debts remain outstanding and unresolved. The fact that they are old does not mean they are not his responsibility. AG ¶ 20(a) does not fully apply:

The debts are attributable to a variety of circumstances. Applicant made a choice - and a not unreasonable choice - to prioritize his daughter's safety over other financial obligations. This, to some extent, was a circumstance beyond his control. But the debts have remained unaddressed for years, although Applicant earned a degree and has now spent several years earning a good living in the defense industry. He has taken no action to address the two credit union debts, despite having the means to do so. Particularly in recent years, Applicant has not acted responsibly towards this creditor and has not undertaken a good-faith effort to resolve or address these two debts. AG ¶ 20(b) only partially applies, and AG ¶ 20(d) does not apply. Applicant did not establish that any of the remaining mitigating conditions should fully apply to mitigate the security concern demonstrated by his delinquencies.

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(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.

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. I credit Applicant's military service, his pursuit of an education, and his efforts as a father to protect his daughter's safety. But the debts incurred during that period remain, and Applicant has not yet undertaken a good-faith effort to address them through a track record of steady payments, despite other evidence of financial stability. If he does that in the future, he may demonstrate eligibility for access

to classified information at a later date. But as of now, he has not met his burden of showing that he has mitigated the financial security concerns shown by his history of delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude he did not provide 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge