



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



In the matter of:)
)
) ISCR Case No. 17-02213
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2018

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 August 8, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 October 24, 2017, 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 December 26, 2017. 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 1 through 5. Applicant did not respond to the FORM, provide documentary evidence, or object to the Government's evidence, and it is admitted. The case was assigned to me on April 12, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.c and 1.d. He denied the SOR allegations in ¶¶ 1.a, 1.b, and 1.e. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He is a high school graduate. He disclosed on his January 2015 security clearance application (SCA) that he served on active duty in the military from February 2007 to October 2007; was in the National Guard from October 2007 to December 2011; and was on active duty from December 2011 to July 2013. He received an honorable discharge. He disclosed that he has worked for a federal employer since 2010.¹ He has never been married and has a 15-year-old child.²

In Applicant's SCA he disclosed the credit card debts alleged in SOR ¶ 1.c (\$11,201) and ¶ 1.d (\$3,880). He disclosed that his financial problems began in December 2013. He stated the same information for each debt as to why they were delinquent:

Income decreased significantly after returning from my military deployment. Along with newly acquired financial responsibilities i.e.: new car and new apartment.

Account [#] (amount owed \$11,201.69) account was closed and currently being worked on with the collection agency in order to settle the debt.

Budgeting my finances in efforts to satisfy my debt that is owed to [creditor]. Coming up with a valid payment plan that I can afford. Scheduling a set due date that I can abide by each month until the total debt is satisfied.³

In Applicant's answer to SOR ¶ 1.c (\$11,201) he stated: "Admit-I pay \$112 /month on this account."⁴ His answer to SOR ¶ 1.d (\$3,880) was: "Admit-I pay \$39/month on this account."⁵

¹ Applicant's disclosure that he has worked for a federal employer since 2010 contradicts the dates he was serving in the military. It may be that his employer held his job for him while he was serving. No other clarifying information was provided.

² Item 3.

³ Item 3.

⁴ Item 2.

⁵ Item 2.

Credit reports from June 2017 and February 2015 corroborate all of the debts alleged in the SOR. The June 2017 credit report shows that Applicant made a payment of \$112 on the account in SOR ¶ 1.c, and reflected a past-due amount of \$6,119. The delinquency began in February 2014. Both credit reports show the debt was charged off in May 2014. The June 2017 credit report reflected a payment of \$39 on the debt in SOR ¶ 1.d and a past-due amount of \$2,007. Both credit reports show the debt was charged off in October 2014. It is unknown when Applicant began making payments, if they were consistent, and if he has an agreed upon settlement with the creditors.⁶

In Applicant's SOR answer, he denied the debt in SOR ¶ 1.a (\$32,357) and stated "Deny-In the process of being removed from my credit report." He further stated:

Legal challenges have been sent to all 3 major credit bureaus in reference to this account. Due to the fact that the state of [X] requires the credit bureaus to uphold their statutory obligations to consumers with regard to fairness and accuracy of their credit reports. Therefore this account is in the process of being removed from my credit report.⁷

Applicant did not explain if he had an account with the creditor, if he timely paid the account, the basis of his legal challenge, or the results of his challenges to the credit bureaus. He did not provide evidence that the debt was removed from his credit report.

Applicant's response to SOR ¶ 1.b (\$13,199) was: "Deny-Item removed from my credit report." His response to SOR ¶ 1.e (\$1,071) was: "Deny-Item removed from my credit report."⁸ He did not provide evidence that these debts did not belong to him or if he paid them. He did not provide evidence that the debts are no longer reported on his credit report.

Applicant did not provide information about his current finances, budget, and if he has participated in financial counseling.

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

⁶ Items 4, 5.

⁷ Item 2.

⁸ Item 2.

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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that began accumulating in 2014, which he is unable or unwilling to resolve. 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 disclosed two delinquent debts on his 2015 SCA that are alleged in the SOR. His June 2017 credit report reflects that he has made some payments toward the two debts, but it is unknown for how long and if they were consistent. He has not provided sufficient and corroborating documentary evidence that the remaining delinquent debts did not belong to him; he does not owe them; he has paid them; he has a payment plan; he has disputed them with the creditor or credit bureaus; or the basis of the dispute and its resolution. He indicated they were to be removed from his credit report or had been removed, but did not provide documentary evidence to support his position. There is insufficient evidence to conclude that his behavior is unlikely to recur. Applicant's failure to pay his financial obligations casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

In Applicant's SCA, he attributed his financial problems to his income significantly decreasing after returning from his military deployment and acquiring new financial responsibilities, such as a new car and apartment. Applicant's decrease in income was beyond his control. Acquiring a new car and apartment was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. It appears at some point, Applicant began addressing two of his delinquent debts, but he failed to provide sufficient corroborating evidence that the other SOR debts have been resolved. AG ¶ 20(b) partially applies.

There is some evidence that Applicant is paying two delinquent debts. It is unknown how long he has been making payments. There is sufficient evidence to apply AG ¶ 20(d) to the debts in SOR ¶¶ 1.c and 1.d.

There is no evidence Applicant has received financial counseling. There is insufficient evidence to conclude there are clear indications that his financial problems are being resolved or under control. Applicant has three SOR debts totaling approximately \$47,627 that are unresolved. Applicant's response was these debts were being removed or were removed from his credit report. He failed to address why he had not paid them, what the specifics of his disputes were, and what corroborating documents he has to support his explanation that he was no longer obligated to pay them. AG ¶¶ 20(c), 20(d), and 20(e) do not apply to the three remaining debts.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 32 years old. He served in the military and received an honorable discharge. He attributed his financial problems to a decrease in income when he was discharged from the military in 2013. He failed to provide corroborating evidence that he is not responsible for the debts alleged in the SOR or his actions to resolve them. At this juncture, Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed 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
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge