



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



In the matter of:

ISCR Case No. 17-03261

Applicant for Security Clearance

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2018

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On January 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on March 1, 2018, 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) on April 6, 2018. The evidence

included in the FORM is identified as Items 3-6 (Items 1-2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 16, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In May 2018, Applicant submitted exhibits (AE) A-J, which were admitted without objection. Items 3-6 are admitted into evidence without objection. The case was assigned to me on August 28, 2018.

Findings of Fact

Applicant admitted all the allegations in his answer to the SOR. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 31 years old. He has worked for a defense contractor since February 2014. He is married with no children. He holds a bachelor's degree.¹

The SOR alleges 10 delinquent debts totaling approximately \$13,812. The debts are supported by credit reports from October 2016 and August 2017; Applicant's statement to a defense investigator in August 2017; his answers to interrogatories in December 2017; and his SOR admissions.²

Applicant claimed the reason for his financial distress was because in 2011, his first job out of college paid less than he anticipated because it was commissioned-based. He became overextended when he purchased a car, rented an apartment, and purchased consumer goods. When he could not make his monthly payments, the accounts became delinquent. The current status of the debts is as follows:

SOR ¶ 1.a (car repossession debt-\$6,251). Credit reports show that the last action taken on this debt was in April 2012. Applicant waited until January 2018 to contact the creditor about this debt. The creditor indicated the account was closed and charged off. Applicant documented receiving an IRS 1099-C, cancellation of debt form. He also claims that he recently looked into paying the debt even though it was charged off, but found out this debt is barred by the state statute of limitations.³

SOR ¶ 1.b (credit card debt-\$2,904). Credit reports show that the last action taken on this debt was in May 2012. Applicant claims that once he received the SOR, he contacted the creditor who indicated the account was closed and charged off. He was told the debt was beyond the state statute of limitations for collections. This account is unresolved.⁴

¹ Items 2-3.

² Items 2-6.

³ Item 2, 5-6; AE A.

⁴ Items 2, 5-6; AE A.

SOR ¶ 1.c and 1.e (rental property debts-\$1,718; \$500). These debts arose when Applicant became delinquent on his rent payments and was eventually evicted from his apartment. These debts went delinquent in 2012. Applicant claims that once he received the SOR, he contacted the creditor and set up a payment plan making \$25 monthly payments. He documented two months' worth of payments in December 2017 and February 2018. His May 2018 FORM response (AE A-J) did not include documentation of additional monthly payments on these debts. These accounts are unresolved.⁵

SOR ¶ 1.d (rental property debt of \$975). This debt arose when Applicant became delinquent on his rent payments. This debts went delinquent in 2012. Applicant claims that once he received the SOR, he contacted the creditor, made an initial \$50 payment, and set up a payment to pay \$25 monthly. He documented one payment. His May 2018 FORM response (AE A-J) did not include documentation of additional monthly payments on this debt. This account is unresolved.⁶

SOR ¶ 1.f (credit card debt-\$488). Applicant acquired this credit card to help pay off accumulated debt. This account went delinquent in 2014. Upon receiving the SOR, Applicant contacted the creditor and established a payment plan. He documented making three monthly payments of approximately \$92 in March, April, and May of 2018. This account is being resolved.⁷

SOR ¶ 1.g (cell phone debt-\$392). Credit reports show that the last action taken on this debt was in 2014. Applicant claims that once he received the SOR, he contacted the creditor. He was told the debt was beyond the state statute of limitations for collections. This account is unresolved.⁸

SOR ¶ 1.h (utility debt of \$975). This debt is from the utilities company Applicant used when he was renting one of the properties listed above. He failed to pay the utilities and they became delinquent in 2012. Applicant claims that once he received the SOR, he contacted the creditor and set up a payment plan to pay \$25 monthly. He documented one payment in February 2018. His May 2018 FORM response (AE A-J) did not include documentation of additional monthly payments on this debt. This account is unresolved.⁹

SOR ¶ 1.i (utility debt-\$236). This debt is from the utilities company Applicant used when he was renting one of the properties listed above. He failed to pay the utilities and they became delinquent in 2012. Applicant claims that once he received the

⁵ Item 2; AE A-J.

⁶ Item 2; AE A-J.

⁷ Item 2; AE A, E-J.

⁸ Items 2, 6.

⁹ Item 2, 6; AE A-J.

SOR, he contacted the creditor and set up a payment plan. He documented making two payments of \$117 and settling this account in March 2018. This account is resolved.¹⁰

SOR ¶ 1.j (credit card debt-\$537). Applicant acquired this credit card to purchase clothing after graduating from college. This account went delinquent in 2012. Upon receiving the SOR, Applicant contacted the creditor and was told the account was closed. This account is unresolved.¹¹

Applicant submitted a personal budget showing a monthly net remainder of between \$284 and \$1,044 each month. His father is making his monthly student loan payments of approximately \$368, pursuant to his father agreeing to pay for Applicant's college costs. Applicant provided documentation that he has paid non-SOR accounts in the past, which I have considered. There is no evidence of financial counseling.¹²

Applicant presented his 2018 performance appraisal where he was rated as "above average."¹³

Policies

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 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(a), 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.

¹⁰ Item 2, 6; AE A-D.

¹¹ Item 2, 5.

¹² Item 2 (enclosures 1, 3, and additional information).

¹³ Item 2 (enclosure 2).

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 remain unpaid and unresolved. I find all disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that in approximately 2012 his income was insufficient to meet his living expenses, which contributed to his delinquent debts. He did not present sufficient evidence to show that his subsequent actions to deal with his debts were responsible under the circumstances. He failed to contact any of his

creditors until the issuance of his SOR in January 2018. While he settled one debt (1.i), has made three payments toward another debt (1.f), and made initial payments toward the three rental debts (1.c-1.e), he failed to show his follow-up action on these debts. I find AG ¶ 20(b) partially applies. There is no evidence of financial counseling and there is insufficient evidence to show that the debts are under control or being resolved. AG ¶ 20(c) does not fully apply. His delayed action in contacting the creditors and his minimal payments on the few debts that he is paying, does not establish a good-faith effort to repay or resolve his debts. AG ¶ 20(d) does not apply. There was no evidence presented disputing any of the debts. AG ¶ 20(e) does 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 guideline 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 considered his struggles at a job which paid less than he anticipated and his recent positive performance evaluation. However, Applicant has not established a track record of financial stability.

Overall, 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge