



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 23-00642

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2025

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On April 6, 2022, Applicant submitted a Questionnaire for National Security Positions (SF-86). On April 4, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the CAS was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 20, 2023, Applicant submitted his response to the SOR.

On July 10, 2023, Department Counsel was ready to proceed. On July 14, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. By email dated July 26, 2023, Applicant waived his right to have 15 days' notice from the date of notice to date of hearing. (Hearing Exhibit (HE I)). On July 26, 2023, DOHA issued a Notice

of Hearing scheduling the hearing for July 27, 2023. The hearing was convened as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 6, which I admitted without objection. Applicant testified, did not call any witnesses, and did not offer any documentary evidence. I held the record open until September 29, 2023, to afford Applicant an opportunity to submit evidence. He did not submit any post-hearing evidence. On August 4, 2023, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 47-year-old diving construction laborer employed by a defense contractor since January 2022. He is a first time applicant for a security clearance and is unsure whether obtaining a clearance is a requirement of his continued employment. (Tr. 13-19; GE 1)

Applicant received his high school diploma in June 1995. He attended college “for a year . . . over 20 years (ago).” (Tr. 20-21) Applicant did not serve in the U.S. Armed Forces. (GE 1) He married in February 2006, and at the time of his hearing had been separated from his wife since April/May 2020 or about three years. Applicant has a daughter and a son, both minors, from his marriage and he has full custody of them. He also has an adult daughter from a previous relationship. Applicant’s estranged wife lives in a nearby state. (Tr. 21-24, 26, 28)

Applicant’s wife filed for divorce in February 2023 after they separated, and divorce proceedings were delayed because of a defective service of process. As of his hearing, Applicant had not retained a divorce lawyer stating, “I’m supporting my children.” (Tr. 24-25, 32)

Financial Considerations

Applicant’s 12 delinquent SOR debts are established by his April 6, 2022 SF-86; his OPM Report of Investigation, Summarized Results of Applicant’s Personal Subject Interview (PSI) conducted on July 13, 2022 with follow-on contact; his Response to Interrogatory dated December 5, 2022; his April 21, 2022, December 19, 2022, and March 29, 2023 Credit Bureau Reports; and his April 20, 2023 SOR Answer. (GE 1-6; SOR Answer) To all 12 delinquent SOR debts, Applicant responded, “I ADMIT, CURRENTLY DISPUTING IN DIVORCE COURT.” (SOR Answer)

Applicant attributed his financial problems to his pending separation and divorce. He explained that while he was married, he deposited his paychecks into a joint account and his estranged wife “handled the finances.” As a result of his wife’s behavior, he “started seeing that there was mental illness.” That behavior raised concerns about the safety of their children. While living on the East Coast, Applicant had his wife placed in a 72-hour hold three times because of her behavior. The “courts got involved” and his wife

was ordered to undergo a psychological evaluation and she “was pre-diagnosed with schizophrenia, bipolar.” Applicant stated his wife endangered their children by doing such things as “trying to throw [their] daughter out of a four-story building” and attacking their son. It got to the point where Applicant was required to sleep with his children behind locked doors to protect them from their mother. Applicant added during this timeframe, “she put me in a lot of this debt.” (Tr. 28, 33-35) When Applicant and his wife separated, they were living on the East Coast. After his estranged wife left, Applicant and his children moved back to the West Coast to be near his family. As noted, his wife moved to a nearby West Coast state. (Tr. 26) As of his hearing date, Applicant had full custody of the children, and his wife was not allowed visitation rights until she had received treatment for her mental illness. As far as Applicant was aware, his wife had not received treatment. (Tr. 34) Applicant stated he is “trying to move forward in my life with my children.” (Tr. 35)

Applicant first realized that his wife was mismanaging their finances in the 2019 timeframe when one of their cars was repossessed due to non-payment. After that, he noticed that his wife was mismanaging their finances. (Tr. 29-30) Applicant’s finances remain in a state of uncertainty because it has yet to be determined who will be responsible for their respective marital debt. (Tr. 32) A pro-bono attorney counseled Applicant not to pay any of his marital debts in anticipation of those debts being allocated in divorce court. (Tr. 40-41) Applicant plans to apply for a consolidation loan when he knows what his debt burden is, but until he knows what he owes, he cannot apply for a loan. He is anxious to repair his credit and regain financial responsibility. (Tr. 42-43)

Applicant stated the reason for the delay in filing for divorce following their 2020 separation was due to his wife’s “mental state” and his inability to communicate with her. His only means of communicating with her is “through texting.” (Tr. 32)

Because Applicant’s debts have not yet been allocated in divorce court, none of his SOR debts have been paid or otherwise resolved. Summarized, his 12 SOR allegations are:

(1.a) charged-off car loan following voluntary repossession in the amount of \$10,785. The account was opened in 2018. Applicant was unsure whether this repossession was a car he and his wife had while they were married or a car he co-signed for his daughter. Applicant has not had an opportunity to look into this particular debt. Applicant has not addressed this debt with the creditor. (Tr. 30, 36-40)

(1.b) collection account owed to an apartment management company in the amount of \$5,528. The management company claimed Applicant did not give them proper notice before leaving their West Coast apartment, “right before COVID.” Applicant has not discussed this debt with the creditor. (Tr. 43-46)

(1.c) collection account owed to an apartment management company in the amount of \$3,855. Applicant stated that he had to leave their East Coast apartment before the lease expired, “due to (his wife’s) mental state issue.” Applicant has not addressed this debt with the creditor. (Tr. 46-48)

(1.d) collection credit card account in the amount of \$2,353. Applicant was not sure about this account stating, "I do not know. I believe that is something that my estranged wife might have accumulated." Applicant has not addressed this debt with the creditor. (Tr. 48-49)

(1.e) collection cell phone account in the amount of \$2,170. Applicant and his wife switched cell phone companies. He stated that his wife, "got money from when we switched over and she didn't pay it (new cell phone company)." Applicant has not addressed this debt with the creditor. (Tr. 49-50)

(1.f) collection credit card account in the amount of \$1,387. Applicant was not sure about this account stating, "because of (his wife's) mental state, things that I didn't know that she may have opened . . . it -- she ran all our finances. I don't know." Applicant has not addressed this debt with the creditor. (Tr. 50-51)

(1.g) collection utility account in the amount of \$1,374. This utility bill was for a house on the East Coast Applicant and his wife were living in before they moved to their East Coast apartment. He stated his wife was responsible for paying the bills and he did not become aware of this bill until it showed up on his credit report. Applicant has not addressed this debt with the creditor. (Tr. 52-53)

(1.h & 1.i) collection medical bills owed to the same creditor in the respective amounts of \$811 and \$623. Applicant was unsure if these bills were for himself, his wife, or his children. He stated that he would, "let the courts figure out." Applicant has not addressed this debt with the creditor. (Tr. 53-56)

(1.j) collection cable bill in the amount of \$355. Applicant said this was for "[a] normal cable bill" and that he is willing to pay it off but has delayed doing so pending the outcome of his divorce. Applicant has not addressed this debt with the creditor. (Tr. 56)

(1.k) collection gas bill in the amount of \$75. Applicant has delayed taking further action on this debt pending the outcome of his divorce. (Tr. 56-57)

(1.l) charged-off department store account in the amount of \$1,031. Applicant said he did not know of this bill until he saw it on his credit report. Applicant has not addressed this debt with the creditor. (Tr. 57)

Applicant is unaware of the motive behind his wife opening up these various accounts, but assumed, "that it could be just creating credit so she could have extra." (Tr. 58) Applicant's wife lost her job during the COVID-19 pandemic and began drawing unemployment. Although he continued to support the family with his income, he "never once saw a dime of that (wife's unemployment) and that's when finances became hard." (Tr. 58-59)

Applicant hoped his divorce would be final by the end of the year, but was uncertain whether that would happen depending on "how quickly I'm going to be getting court dates." (Tr. 61) Applicant and his wife have no property. He stated, "The only thing that

she's really trying to adamantly get is her children, but that's why I haven't really [gone] and spent extra money so it could go to my children and our livelihood is because I – because of the court documents that I got from [East Coast]." (Tr. 61) Applicant has not participated in financial counseling. (Tr. 61-62) He emphasized that it was his intention to resolve his delinquent debts as soon as a court allocated the respective amounts owed by him and his wife through their impending divorce. (Tr. 62)

Applicant earns about \$80,000 to \$90,000 a year. He does not own a house, and he and his children live with his girlfriend. Applicant does not pay rent to his girlfriend, but "help(s) her out with whatever she needs" on an as needed basis. He has a \$780 monthly car payment for his 2022 Toyota Camry. Applicant does not have any money in his savings account and did not know how much he had in his checking account. He added that he is a single father and spends all his money on his children. (Tr. 25-28)

At the conclusion of the hearing, I held the record open to afford Applicant an opportunity to submit additional evidence. I suggested that he review his credit reports and seek financial counseling. I discussed various evidence that would be helpful for his case and the importance of having a plan in place and following through with that plan. Applicant acknowledged that getting his clearance was important and that he would follow through with my suggestions and addressing his debts. (Tr. 62-78) As noted, Applicant did not submit any post-hearing evidence.

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 AG ¶ 2, describing 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

Financial Considerations

AG ¶ 18 articulates 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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Id. (internal citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

AG ¶ 20 lists five potential mitigating conditions:

- (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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government

presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant is able to receive partial credit under AG ¶ 20(b) as a result of his ongoing contentious divorce. However, no other mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d).

Applicant has been gainfully employed since August 2022 with his current employer, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his long-standing financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

While the debts alleged in the SOR arguably resulted in large part from circumstances beyond Applicant's control, that is only half of the analysis and Applicant's response to his financial problems must be the second consideration. Applicant was unable to submit any documentary evidence to supplement the record with relevant and material evidence to mitigate the financial security concerns. He did not maintain contact with his creditors, nor did he pursue financial counseling. By failing to provide such information, financial considerations security concerns remain.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. Applicant is a hard-working and intelligent individual and a responsible father. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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

Subparagraph 1.a – 1.l:

Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT TUIDER
Administrative Judge