



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



In the matter of:)
)
) ISCR Case No. 24-02408
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2025

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On January 7, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). He answered the SOR on January 15, 2025, and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on January 24, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 30, 2025, and provided an undated response (FORM Response). The case was assigned to me on April 10, 2025. The Government exhibits included in the FORM, marked as Items 1 through 9, and the FORM Response, are admitted in evidence without objection.

Findings of Fact

Applicant is a 57-year-old employee of a government contractor for whom he has worked since February 2024, with no periods of unemployment since 2011. He is single, having been married in 1997 and divorced in 1999. He earned a high school diploma in 1986. He has no children. (Items 2, 3)

In the SOR, the Government alleged Applicant's six delinquent consumer debts totaling approximately \$24,400 (SOR ¶¶ 1.a through 1.f). It also alleged his 2003 Chapter 7 bankruptcy petition filing and 2004 Chapter 7 discharge (SOR ¶ 1.g). He admitted the SOR allegations. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Items in the FORM. (Items 1-5, 8, 9)

Without alleging these additional bankruptcies in its SOR, in its FORM, the Government argued that Applicant filed an additional Chapter 7 bankruptcy petition in 1993 that was discharged in 1994, and an ongoing Chapter 7 bankruptcy petition that he filed in December 2024. I will not consider unalleged conduct for purposes of disqualification. I will consider it for appropriate purposes such as for evidence of mitigation and in the whole-person analysis. In the FORM Response, Applicant claimed, without corroborating documentation, that his father with virtually the same name (minus the "Jr." suffix) filed the 1993 Chapter 7 bankruptcy petition and was the beneficiary of the 1994 Chapter 7 discharge. (Items 6-8; FORM Response)

In his December 2024 Chapter 7 bankruptcy petition, Applicant listed that he owed about \$28,000 in taxes to the Internal Revenue Service (IRS) that he incurred between tax years 2018 and 2023. He also listed the SOR debts and other non-SOR debts as unsecured debts totaling about \$31,800 in Schedule F of the bankruptcy petition. The tax debt owed to the IRS and about \$7,400 of the unsecured debt listed in Schedule F is not alleged in the SOR. In Schedule J of the 2024 Chapter 7 bankruptcy petition, he listed that he had a monthly budget deficit of \$1,508. One of the expenses listed in the petition is a retail installment contract on a vehicle that he purchased in 2022 for about \$40,000. His monthly payment on this vehicle is \$696. There is no evidence in the record regarding the outcome of the 2024 Chapter 7 bankruptcy petition. (Item 8)

Applicant became delinquent on the SOR debts in about 2021 or 2022 because of underemployment, back surgery on an unspecified date, and the COVID-19 pandemic. In the FORM Response, Applicant provided documents showing that in August 2023, he entered into an agreement with a debt consolidation company (DCC) to resolve his SOR debts. He listed the reason for entering into this agreement as limited fixed income with insufficient income to cover basic expenses. This agreement provided his proposed payment schedule to the company, but did not provide evidence of any disbursements to the SOR creditors. It also contained a document that reflected a budget where he allegedly had a monthly surplus of about \$3,390. (Items 3, 9; FORM Response)

In Applicant's November 2024 response to interrogatories from the Defense Counterintelligence and Security Agency (DCSA), he provided a personal financial statement in which he claimed that he had \$942 in surplus funds at the end of each month. None of the expenses entered on this document were related to the SOR debts. He did not provide any information, documentary or otherwise, that the DCC resolved his debts, and his subsequent Chapter 7 bankruptcy petition indicates that it did not resolve them. His hiring of the DCC and his December 2024 Chapter 7 bankruptcy filing are the only resolution efforts of which there is evidence. (Items 3, 9; FORM Response)

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 within DOD 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 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

Guideline F, Financial Considerations

The security concern 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.

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 had six delinquent debts totaling about \$24,400. All the SOR accounts have been delinquent for years. He also filed a petition in Chapter 7 bankruptcy in 2003, receiving a Chapter 7 discharge in 2004. The above disqualifying conditions are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial delinquencies are recent and ongoing, therefore I do not find they are unlikely to recur. He is in the process of resolving his SOR debts through a Chapter 7 bankruptcy petition. While this form of resolution is a legally viable means of resolving debts, given the lack of any form of repayment involved, it is of little mitigative value because it is neither acting responsibly nor in good faith with respect to his debts. The 2024 Chapter 7 bankruptcy petition is also at least the second time that he sought bankruptcy protection because he has not been able to meet his financial responsibilities.

As the record evidence provided that his Chapter 7 bankruptcy petition remains active, I do not find that Applicant has provided evidence of a track record of financial responsibility. He owes approximately \$28,000 in federal tax debt that will likely not be discharged in bankruptcy, for which he has not provided any evidence of resolution. Even though this debt was not alleged in the SOR, his past-due tax debt still undercuts any evidence of mitigation. While he provided evidence that he contracted with the DCC in August 2023, he provided no evidence of any payments made to creditors. The Chapter 7 bankruptcy petition he filed about 15 months later listing many of the same debts in similar amounts tends to show that his efforts via the DCC were not successful. His most recent budgetary information, his Chapter 7 bankruptcy petition schedules reflect a monthly budget deficiency, further detracting from his ability to show that his financial issues are behind him. Given these considerations, I find that none of the financial consideration mitigating conditions are applicable.

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 relevant 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.g: **Against Applicant**

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge