



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



In the matter of:)	
)	
)	ISCR Case No. 17-02626
)	
Applicant for Security Clearance)	

Appearances

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

01/04/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 18, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on September 13, 2017, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2018, scheduling the hearing for May 21, 2018. I convened the hearing as scheduled.

I appended to the record, as Hearing Exhibits (HE) I and II, the Government's discovery letter and exhibit list. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A and B, which were admitted in evidence without objection.

At Applicant's request, and with no objection from the Government, I left the record open until June 4, 2018, for Applicant to submit additional documentation. Applicant timely submitted additional evidence, which I collectively marked as AE C and admitted in evidence without objection. I marked as HE III the Government's email indicating no objection to AE C. DOHA received the hearing transcript (Tr.) on June 6, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations except ¶ 1.f. He is 36 years old. He graduated from high school in 2000, and he attended some college, but did not earn a degree. He is married. He has one stepchild and two children; all are minors.¹

Applicant has worked for various DOD contractors since 2001. He has worked as a courier and support-service specialist for his current employer, a DOD contractor, since March 2018. He has held a security clearance since 2001.²

The SOR alleges ten delinquent consumer accounts totaling \$12,631 (SOR ¶¶ 1.a - 1.c, 1.f - 1.i) and one delinquent medical debt for \$153 (SOR ¶ 1.d). It also alleges that Applicant filed chapter 7 bankruptcy in 2008 and received a discharge in 2009 (SOR ¶ 1.e). The allegations are established by Applicant's admissions, credit reports from November 2015, July 2017, and May 2018, and Applicant's bankruptcy record. Applicant also disclosed and discussed his debts and his bankruptcy on his 2015 security clearance application (SCA) and during his 2017 background interview.³

Applicant attributed his delinquent debts and his bankruptcy to the following factors: (1) medical expenses incurred after a 2001 car accident; (2) moving costs incurred in 2006; (3) burial expenses of \$900 in 2008 and 2010; (4) \$1,500 in unauthorized charges that he incurred around 2010 when his identity was stolen; (5) he was the primary breadwinner after his marriage in 2011 through the birth of his children in 2012; (6) he assisted his mother with paying for her medication in February and March 2018; and (7) he has assisted with caring for his grandmother. Despite these factors, he traveled overseas for tourism in 2009 and 2015. He testified that by the time of his 2017 background interview, he was already in the process of trying to resolve some of his delinquent accounts, to include SOR ¶¶ 1.b and 1.c. He also testified that

¹ Tr. at 7-8, 11, 28-29, 78; GE 1, 2.

² Tr. at 5-6, 25-28; GE 1, 2; AE C.

³ GE 1-5; AE C.

he had scheduled payments in September 2017 to resolve some of the SOR debts, as further discussed below.⁴

SOR ¶ 1.a is for a \$10,321 charged-off auto loan account for Applicant's used car which was purchased in 2009 and voluntarily repossessed in 2011. He became delinquent because he did not have the money to pay for necessary repairs. He established a \$200 monthly payment plan in September 2017 that was scheduled to begin in October 2017 and continue through September 2020. With the exception of missing two monthly payments in February and March 2018, he testified that he has otherwise abided by the plan. He did not provide documentation to corroborate his claim of payments for this debt.⁵

SOR ¶ 1.b is for a \$651 delinquent auto account that Applicant cosigned for his wife. He testified that he was unsure why the account became delinquent because she was responsible for paying it. He testified that she brought the account current in December 2017, and he expected that the account would be fully paid by September 2018. His most recent credit reports from May 2018 corroborate his claim that this account is current.⁶

SOR ¶ 1.c is for a \$574 charged-off credit card. Applicant testified that he established a monthly payment plan in September 2017, and he paid this debt by November 2017. His most recent credit reports from May 2018 corroborate his claim.⁷

SOR ¶ 1.d is for a \$153 delinquent medical account. Applicant was unsure about the origin of this debt, but he testified that he paid it in full in September 2017. He did not provide documentation to corroborate his claim of payment. While this debt was reported on his 2015 and 2017 credit reports, it was no longer reported on his most recent credit report from 2018.⁸

SOR ¶ 1.f is for a \$562 delinquent cable account. Applicant denied this debt. He testified that he has not had an account with this cable company since 2006, when he ended service with the company and returned the associated equipment. He testified that he unsuccessfully attempted to contact the company in September 2017 to dispute the account, and he intended to re-contact the company to close out any outstanding accounts. He had not yet disputed the account through the credit bureaus. While this debt was reported on his 2015 credit report, it was no longer reported on his most recent credit reports from 2017 and 2018.⁹

⁴ Tr. at 30-32, 51, 56, 60-62, 69-72; GE 1, 2.

⁵ Tr. at 29-33, 51-52, 62-65, 70-71; GE 2, 3, 4; AE A, C.

⁶ Tr. at 33-34, 62-65, 69-72; AE C.

⁷ Tr. at 34-35, 51, 62-65, 69-72; GE 3; AE C.

⁸ Tr. at 35-37, 62-67; GE 3, 4; AE C.

⁹ Tr. at 37-39, 62-68; GE 3, 4; AE C.

SOR ¶¶ 1.g through 1.i are for six traffic tickets totaling \$523. Applicant testified that he called the parking authority and paid \$462 to resolve all of his outstanding tickets. He provided documentation corroborating his payment.¹⁰

SOR ¶ 1.e is for Applicant's Chapter 7 bankruptcy filed in 2008 and discharged in 2009. He listed liabilities totaling \$25,692. Applicant testified that he was advised to file bankruptcy because of his inability to pay around \$25,000 in medical bills that he incurred after a 2001 car accident. He acknowledged that he included a personal loan and another car loan in his bankruptcy.¹¹

Applicant testified that he does not have any other delinquent debts. He indicated that he consolidated \$25,000 in student loans, which he was paying at \$300 monthly. His May 2018 credit reports reflect that he has two student loans in collection for \$1,001 and \$1,404, respectively. He testified that he received financial counseling as part of his 2008 bankruptcy, and his church pastor was also assisting him with getting his finances together. He indicated that he and his wife enrolled with a credit-counseling company in May 2018. He intended to clean up his credit report, to include \$1,500 in charges that he incurred in 2010 when his identity was stolen, though he received reimbursement by his bank for such unauthorized charges.¹²

Applicant indicated that he and his wife manage their finances together. He provided a copy of their monthly budget, reflecting a monthly net remainder of approximately \$1,500, which can vary depending on changes to their expenses that can occur during certain times in the year. He testified that while they are able to meet their monthly expenses, at times they are overextended by around \$500. He testified that he has a 401k retirement savings account of around \$600, and he believes his wife also has such an account though he did not know the balance. He testified that he has always received favorable ratings on his performance evaluations. He provided documentation to show that he received numerous certificates of appreciation from his employers over the years. His current annual income is approximately \$60,000, from \$18,000 in 2001, which included a recent pay raise.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 to be used in evaluating an applicant's eligibility for access to classified information.

¹⁰ Tr. at 39-40, 65-66; GE 4; AE B.

¹¹ Tr. at 40-42, 68-69; GE 1, 2, 3, 4, 5; AE C.

¹² Tr. at 42-80; GE 2; AE C.

¹³ Tr. at 42-80; GE 2; AE C.

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(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."

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 Exec. Or. 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* Exec. Or. 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 was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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;
- (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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He filed and received a Chapter 7 bankruptcy discharge once, after he incurred significant medical costs from a 2001 car accident that he could not afford to pay on his limited income. He also provided documentation to show that he resolved

SOR ¶¶ 1.b, 1.c, and 1.g. through 1.i. AG ¶ 20(b) applies to his past bankruptcy and these eight debts.

Applicant did not provide documentation to corroborate his claims of payment for SOR ¶¶ 1.a, 1.d, and 1.f. However, he indicated that he paid SOR ¶ 1.d, he intended to re-contact the creditor for SOR ¶ 1.f to dispute and close out any outstanding accounts, and neither SOR debts are reported on his recent credit reports. I find that AG ¶¶ 20(b) and 20(e) apply as to SOR ¶¶ 1.d and 1.f.

While Applicant did not provide documentation to corroborate his claims of payment for SOR ¶ 1.a, he indicated that he was in the process of paying it. He also indicated that he was working with his pastor and a credit-counseling company to resolve any remaining delinquent accounts. A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

As such, there is sufficient evidence to conclude that Applicant acted responsibly under his circumstances to address his delinquent debts. His finances are under control and there is sufficient evidence to conclude that his financial problems are unlikely to recur. His debts do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), 20(d) are established as to SOR ¶¶ 1.a through 1.i.

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 without questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraph 1.a – 1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge