



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



In the matter of:)
)
) ISCR Case No. 17-03922
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2019

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 November 27, 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 December 12, 2017, and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on September 17, 2018, scheduling the hearing for October 9, 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, called two witnesses, and submitted Applicant Exhibits (AE) A through P, which I admitted in evidence without objection. At Applicant's request, I kept the record open until November 6, 2018, for additional evidence. By that date, Applicant submitted additional documentation, which I marked collectively as AE Q and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on October 16, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 57 years old. He married in 1993 and divorced in 2008. He has an adult daughter, and both she and his grandson live with him.¹

Applicant obtained a high school equivalency diploma in approximately 1980. He has attended college since 2010 but had not yet earned a degree. He honorably served in the U.S. military from 1982 to 1986. He has worked as a graphic artist for a DOD contractor since December 2016. He has never held a security clearance.²

Applicant attributed his delinquent debts to the 2008 economic downturn; his divorce; his job loss in 2010 and subsequent periods of unemployment or employment with limited income; and his diabetes-related expenses when he did not have health insurance. Applicant testified that through his divorce, he was held primarily responsible for the debts incurred during his marriage. After he lost his job of five years as a multimedia director at an architectural firm in May 2010, he went from an annual salary of \$85,000 to being unemployed until June 2011. During this and his subsequent two periods of unemployment, he attended school through a program available to military veterans, and supported himself, in part, through student loans.³

Applicant worked as a truck driver from October 2011 to December 2012, until his diabetes affected his ability to work and he became unemployed for a second time until June 2013. He incurred medical expenses for his diabetes because he did not have health insurance. In 2011, though he worked as a janitor and did part-time work in computer animation through his service-disabled veteran-owned small business, he could not afford the mortgage on his \$340,000 home that he purchased in around February 2009. He moved out and found tenants for his home, but fell behind on his mortgage when two separate tenants failed to pay rent and the homeowners' association (HOA) fees from 2011 through 2014. During this period, he lived with his brother; he rented an inexpensive apartment at \$700 monthly; and he lived with his best

¹ Applicant's response to the SOR; Tr. at 8, 76, 89; GE 1.

² Tr. at 8-9, 73, 76, 92-93; GE 1, 3; AE F, L, M.

³ Tr. at 16-18, 34-109; GE 1, 3; AE E, F.

friend for seven months. He was unemployed for a third time, from June to December 2016.⁴

The SOR alleges two judgments from 2014 and 2015 totaling \$2,407 (SOR ¶¶ 1.a-1.b) and six delinquent consumer accounts totaling \$36,847 (SOR ¶¶ 1.c-1.h). The debts are established by a 2017 credit bureau report and court records. Applicant also disclosed and discussed his debts in his 2017 security clearance application (SCA) and 2017 background interview.⁵

The two judgments in SOR ¶¶ 1.a and 1.b for \$2,407 from 2014 and 2015 stem from Applicant's tenants' failure to pay rent and HOA fees for his home. Applicant testified that he used money from his 401k retirement account to resolve both judgments. The judgments were paid in December 2017.⁶

SOR ¶ 1.c is for a credit card charged off for \$3,050. Applicant testified that this was a joint credit card with his then wife, which he used to pay his mortgage. Applicant provided documentation reflecting that he settled this debt for \$1,835 and paid it in October 2018.⁷

SOR ¶ 1.d is for a credit card charged off for \$7,708. Applicant was the primary account holder but he permitted his then wife to be an authorized user. Applicant testified that she continued to use the card after the divorce, but the card was later destroyed. Applicant testified that he disputed this debt through the credit repair service Lexington Law, and the debt was consequently removed from his credit. He also indicated that he attempted to contact the creditor to settle the debt, but was told that he could not do so because the debt was forgiven. He indicated that he had not yet received an IRS Form 1099-C from the creditor, despite his attempts to obtain one.⁸

SOR ¶ 1.e is for a \$294 charged-off account for a printer, which later turned out to not work. Applicant provided documentation to show that he paid this debt.⁹

SOR ¶ 1.f is for a \$24,927 charged-off debt-consolidation loan. Applicant obtained the loan in 2009 to resolve debts from his marriage that were lingering after his divorce. He indicated that after he lost his job, he used money from his 401(k) retirement account to pay down the balance of this debt to \$13,504, with the intention of continuing to pay it once he found a job. He exhausted the money from his retirement account and was unable to find another job, so the balance climbed to \$24,927. He

⁴ Tr. at 16-18, 34-109; GE 1, 2; AE D, E, F, G, H, I, J, L.

⁵ GE 1-5; AE Q.

⁶ Tr. at 57-58, 60-63, 72, 80; GE 3-5; AE A, B, G, H, I, J, Q.

⁷ Tr. at 63-65, 67-69, 72; GE 3; AE Q.

⁸ Tr. at 63-65, 67-69, 72, 80-82, 102-105; AE N, Q.

⁹ Tr. at 65-68, 71-72, 80-81; AE C, Q.

testified that he was advised by Lexington Law to obtain another debt-consolidation loan to resolve it. However, he provided documentation to show that he instead settled the debt in October 2018 for \$13,804, for which he would pay at \$100 monthly until it was paid in full.¹⁰

SOR ¶ 1.g is for a \$676 apartment fee placed in collection. Applicant was charged a fee by his apartment for his daughter living with him. Applicant indicated that he paid this debt in June 2017. He provided documentation reflecting that this debt is paid.¹¹

SOR ¶ 1.h is for a telecommunication account charged off for \$192. Applicant indicated that he paid this debt in June 2017. He testified that he requested that the creditor send him documentation reflecting his payment, but the creditor did not comply. He provided documentation from the creditor reflecting that the debt was being removed from his credit reports.¹²

Applicant brought his mortgage current by utilizing a program available through his mortgage holder that permitted him to make partial mortgage payments, while tacking the remainder onto the balance of the loan. He exhausted the money from his 401k retirement account, obtained a student loan, and supplemented with money from his janitorial and computer animation work to make his mortgage payments. He indicated that he has not had problems paying his mortgage since obtaining his current job. He testified that he is current on his monthly mortgage payments of \$2,167, and he has been current on his two monthly HOA fees totaling \$240 since November 2017.¹³

Applicant testified that he has worked diligently to improve his credit score by tackling his debts one at a time. He testified that he prioritized bringing a delinquent student loan current, which he did in June 2018, and paying other bills not alleged in the SOR. He testified that he has received telephonic financial counseling from Lexington Law once every two months since June 2017, and he pays them \$68 monthly. He testified that he took their advice to continue rebuilding his credit by timely paying his bills, so that he could obtain a debt-consolidation loan to resolve any remaining debts at once; he had not obtained such a loan as of the date of the hearing. Meanwhile, he testified that Lexington Law was negotiating with his creditors for forgiveness of any interest and penalties on his outstanding accounts. He provided a copy of his budget, reflecting a monthly income of \$4,876 and a monthly net remainder after expenses of \$785. He testified that he has not had a credit card for eight to ten years, and his sole line of credit was for his car. He testified that he commutes 106 miles daily to get to and from work.¹⁴

¹⁰ Tr. at 68-69, 71-73, 78-80, 102-105; GE 1, 3; AE C, N, Q.

¹¹ Tr. at 71-72, 106-107; GE 3; AE Q.

¹² Tr. at 71-72, 100; GE 3; AE Q.

¹³ Tr. at 16-18, 34-109; GE 1, 3; AE C, K, O, N.

¹⁴ Tr. at 16-18, 34-109; GE 1, 3; AE C, K, E, L, N, O, P, Q.

Applicant's brother testified that Applicant lived with him after losing his job. The brother testified that he was aware that Applicant had just purchased his "dream home," and encouraged Applicant to find tenants to live in it. He corroborated Applicant's testimony that Applicant worked as a truck driver, then as a janitor, to make ends meet. The brother testified that one set of tenants sued Applicant when he attempted to move back into his home. When they lost, they vandalized the home, which Applicant had to spend money to repair. The brother testified that Applicant's strength of character pulled him through his difficult times.¹⁵

Applicant's best friend of 25 years testified that Applicant also lived with him for around seven months in 2014, when Applicant faced difficult times and could not afford to pay the mortgage on his home. He testified that he never witnessed Applicant live beyond his means. He testified that he found it commendable, and a reflection of Applicant's dedication, perseverance, and commitment, that Applicant ultimately held onto his home without having to file bankruptcy. As a clearance holder, the witness vouched for Applicant's trustworthiness.¹⁶

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.

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.

¹⁵ Tr. at 47-56.

¹⁶ Tr. at 34-45.

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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 credibly testified that he tried to continue to pay his debts during his period of hardship, by using his 401k retirement account, student loans, and the limited income from his computer animation work. He continued his efforts upon receipt of the SOR and when he had the financial capability to resolve his debts once he obtained his current employment. He also sought and received credit counseling. He provided documentation to show that he paid all of his debts, with the exception of SOR ¶¶ 1.d and 1.f. He was awaiting an IRS Form 1099-C from the creditor for SOR ¶ 1.d, and he settled SOR ¶ 1.f and was scheduled to make payments of \$100 monthly until this debt is paid. I find that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) 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 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 or 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
Subparagraphs 1.a – 1.h:	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