



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



In the matter of:)	
)	
)	ISCR Case No. 18-01769
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 9, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on December 20, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 28, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 12, 2019, scheduling the hearing for May 10, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE K through M and admitted without objection.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since May 2016. He served on active duty in the U.S. military from 1998 until he was honorably discharged in 2015. He seeks to retain a security clearance, which is a requirement for his job. He has a bachelor's degree, which he earned in 2018. He has never married, but he had a cohabitant at one time. He has three children. (Tr. at 34, 36-40, 72, 78; GE 1)

Applicant has a history of financial problems before and after he was discharged from the military. He helped his father financially in the 2000s by financing cars for his father, and then his father did not maintain the car payments. Applicant was unemployed for about four to five months after his discharge. He filed Chapter 13 bankruptcy petitions in 2004, 2007, January 2014, October 2014, and March 2015. All of the cases were dismissed because of Applicant's failure to take some action, such as filing a plan, filing schedules, appearing at a meeting of creditors, or making payments. (Tr. at 26, 41-50, 58-61; Applicant's response to SOR; GE 1-10; AE A, D-H)

Applicant lived with a cohabitant in the house that he owned. They were to share the mortgage loan payments, with each to pay the loan in alternate months. She did not maintain her payments, and then they ended their relationship, which eliminated one income from the household. The Chapter 13 bankruptcies in 2014 and 2015 were to keep the home out of foreclosure. The home was ultimately lost to foreclosure, two vehicles were repossessed, and other debts went unpaid. (Tr. at 24-25, 41-56, 61-68; Applicant's response to SOR; GE 6-10)

The SOR alleges the five dismissed bankruptcy cases; the foreclosure mortgage loan; the deficiencies owed on the auto loans after the vehicles were repossessed; \$15,499 owed to the Defense Finance and Accounting Service (DFAS) for the unearned portion of a reenlistment bonus; and four miscellaneous delinquent debts totaling \$6,400. Except as addressed below, the allegations are established through credit reports and Applicant's admissions.

Applicant lost his home to foreclosure in 2016. There is no evidence of any deficiency. The debt is listed with a \$0 balance by all three credit reporting agencies on the January 2017 combined credit report. The two subsequent Equifax credit reports do not list the debt. Additionally, Applicant recently bought a house financed with a mortgage loan through the bank that financed the house that was lost to foreclosure. (Tr. at 33; Applicant's response to SOR; GE 6-10)

Applicant was paid a reenlistment bonus while in the military. When he was discharged from the military, DFAS wanted \$15,450, which is the unearned portion of his reenlistment bonus, to be repaid. The debt was repaid through withholding of Applicant's income tax refunds. The debt is listed by Equifax and TransUnion on the January 2017 combined credit report, and it is listed on the May 2018 Equifax credit report. It is not listed on the March 2019 Equifax credit report. (Tr. at 26-27, 39, 70-72; Applicant's response to SOR; GE 6-10; AE M)

Applicant defaulted on a car loan. The January 2017 credit report lists the loan as \$5,008 past due with a \$40,250 high credit and charged-off balance. That is the amount alleged in SOR ¶ 1.g. However, the May 2018 Equifax credit report lists the charged-off balance as \$6,692, which presumably is the deficiency balance after the car was sold. Applicant contacted the creditor to obtain information about the debt, but he never received anything from the company. The debt is not listed on the March 2019 Equifax credit report. (Tr. at 23-24; GE 6-9; AE K)

Applicant made his final settlement payment on the \$2,372 debt alleged in SOR ¶ 1.i in June 2018. He made his final payment on the \$550 debt alleged in SOR ¶ 1.j in September 2017. In July 2019, he paid in full the \$3,860 deficiency balance owed on a car loan (SOR ¶ 1.l) after the car was repossessed. (Tr. at 29-31; GE 6-10; AE B, C, L)

Applicant denied owing the \$206 debt alleged in SOR ¶ 1.k. He asserted that he paid the debt several years ago. He contacted the creditor, but they had no listing of his name or Social Security number. The debt is listed by TransUnion on the January 2017 combined credit report. It is not listed on the 2018 and 2019 Equifax credit reports. (Tr. at 30, 68; GE 6-9; AE K)

Applicant paid \$1,197 in May 2018 to resolve a debt in collection. He stated that it was for the \$3,269 debt alleged in SOR ¶ 1.m. That debt is listed by Experian on the January 2017 combined credit report. It is not listed on the 2018 and 2019 Equifax credit reports. The creditor that received the \$1,197 payment does not appear on any credit report. The account numbers for the two creditors are not the same. There is no documentary evidence that the two debts are the same. If they are not the same debt, he paid a debt that was not alleged in the SOR. (Tr. at 31-33, 69; GE 6-10; AE I, J)

Applicant stated that his finances are in better shape, and that he is smarter about credit and managing his finances. He worked in Iraq and Kuwait for about 19 months, which helped him get back on his feet financially. He knows that financial stability is required for him to maintain his security clearance and job, which enables him to support his children. The March 2019 credit report lists only one delinquent debt, the \$3,860 debt alleged in SOR ¶ 1.l, which is now paid. The only balances on the report are \$687 and \$194 for two credit cards, which are current. (Tr. at 33, 73-74, 79; GE 6-10)

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 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
- (b) a history of not meeting financial obligations.

Applicant has a history of financial problems, including dismissed Chapter 13 bankruptcy cases, a foreclosed home, repossessed vehicles, and delinquent debts. The evidence is sufficient to raise the above 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.

Applicant attributed his financial problems to helping his father financially, unemployment, his cohabitant's failure to pay her share of the household's expenses, and their break-up, which eliminated her income from the household. His financial problems were partially beyond his control, as he also bears responsibility.

Applicant used his three most recent Chapter 13 bankruptcies in unsuccessful attempts to save his house from foreclosure. There is no evidence of any deficiency after the foreclosure. Applicant completely paid the \$15,499 DFAS debt, and he paid or settled three other debts alleged in the SOR totaling \$6,752. He paid \$1,197 to resolve one more debt, but that does not appear to be one of the debts alleged in the SOR. Factoring in that debt, he resolved \$23,448 worth of delinquent debts. The remaining three debts are not on Applicant's most recent credit report. Except for an SOR debt that was paid after the credit report, there are no delinquent accounts on the report. Applicant stated that he is smarter about credit and managing his finances. He knows that financial stability is required for him to maintain his security clearance and job, which enables him to support his children.

Applicant does not present a perfect case in mitigation, but perfection is not required. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in his intentions to be financially responsible. There are clear indications that the problem is being resolved and is under control. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. Financial considerations security concerns are mitigated.

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. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about 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
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Subparagraphs 1.a-1.m:	For Applicant
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Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge