



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



In the matter of:)
)
) ISCR Case No. 18-01746
)
Applicant for Security Clearance)

Appearances

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

June 11, 2020

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On July 25, 2017, Applicant submitted a Questionnaire for National Security Positions (SF-86). On September 6, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On November 6, 2018, the Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge (AJ-1); on December 12, 2018, the case was reassigned to a different administrative judge (AJ-2); on January 17, 2019, the case was reassigned back to AJ-1; on March 13, 2019, the case was reassigned back to AJ-2; and on April 10, 2019, the case was reassigned to me. On June 10, 2019,

DOHA issued a notice of hearing scheduling the hearing for August 16, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. I held the record open until September 30, 2019, to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE D through K, which were admitted without objection. On September 13, 2019, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, and 1.d, with explanations, and denied SOR ¶ 1.c, with explanations. Additional findings of fact follow.

Background Information

Applicant is a 47-year-old material management supervisor employed by a defense contractor since November 2016. He seeks to retain his secret security clearance, which is a requirement of his continued employment. He has successfully held clearances while employed by various defense contractors since 2000. (Tr. 13-17)

Applicant earned his General Educational Development (GED) certificate in 2012. Since earning his GED, he has earned about eight college credit hours. (Tr. 18-20) Applicant married in 2006. He has an adult son from a previous relationship, and three children with his wife ages 20, 18, and 11. All three children reside with Applicant and he financially supports them. Applicant's wife is employed part-time as an events planner as a non-appropriated fund employee with the Coast Guard. (Tr. 20-24)

Financial Considerations

Applicant's responsibility for the four delinquent SOR debts, totaling \$36,985, is established by his SOR Answer; his 2017, 2018, and 2019 credit reports; his 2018 Office of Personnel Management Personal Subject Interview (OPM PSI); and his hearing testimony.

Applicant's financial problems trace back to his 2012 move to a high-cost location for a better job and to provide an environment that would offer more opportunities for his children. After arriving at his new location, Applicant found that his living expenses exceeded his pay. His wife began working outside their home about a year after the move, but not before their living costs resulted in excessive debt. Additionally, in 2018, Applicant's father-in-law stayed in his home for three months prior to open-heart surgery and during his recovery. Applicant's wife quit her job to care for her father. In addition to his wife's loss of income during this three-month period, Applicant incurred incidental medical bills and transportation costs on behalf of his father-in-law. (Tr. 28-30)

The following is a summary of Applicant's SOR debts and their status:

SOR ¶ 1.a - \$1,200 delinquent state taxes for tax year 2013. Applicant stated that he filed his tax returns on his own for the first time using TurboTax and apparently made a mistake. The state tax authorities caught the mistake and notified Appellant in 2014. Applicant submitted documentation that he made payment arrangements in 2018 to pay down this debt at a rate of \$50 per month. Post-hearing, Applicant submitted documentation that he is making payments in compliance with his agreement. (SOR Answer; Tr. 31-38; AE I) **DEBT BEING RESOLVED.**

SOR ¶ 1.b - \$8,009 charged-off automobile loan. When Applicant moved in 2012, he sold his 2008 Toyota Highlander to an automobile dealer. However, after the sale to the dealer, there was an \$8,009 balance that remained payable to the credit union. To cover the balance, Applicant made an informal arrangement with his sister-in-law to make payments to the credit union. Her payments to the credit union were to be in lieu of paying rent to him on the house he had built. His sister-in-law failed to honor her agreement, and the loan went into default. Applicant submitted documentation that he made payment arrangements in 2018 to pay down this debt at a rate of \$131 per month. Post-hearing, Applicant submitted documentation that he is making payments in compliance with his agreement. (SOR Answer; Tr. 38-47; GE 5; AE E, AE H) **DEBT BEING RESOLVED.**

SOR ¶ 1.c - \$14,993 collection account. This is the same debt alleged in SOR ¶ 1.d. Applicant submitted documentation that this debt has been deleted from his credit report. (SOR Answer; Tr. 47-49; AE E) **DUPLICATE DEBT – DEBT RESOLVED.**

SOR ¶ 1.d - \$12,783 charged-off account for a personal loan. As noted, this is the same debt alleged in SOR ¶ 1.c. Applicant submitted documentation that he made payment arrangements in 2018 to pay down this debt at a rate of \$100 per month. Post-hearing, Applicant submitted documentation that he is making payments in compliance with his agreement. (SOR Answer; Tr. 49-51, 65-67; AE E, AE J) **DEBT BEING RESOLVED.**

Post-hearing, Applicant submitted a budget that reflects a net monthly remainder of \$985. His budget lists all of his monthly payments to his SOR creditors. Applicant's budget also indicates that he maintains a modest lifestyle and lives within his means. (Tr. 55-63; AE D) To improve his credit, Applicant retained the services of a debt resolution company. At some point in the future, the debt resolution company will assume making payments to Applicant's creditors. (Tr. 67-72; AE A – AE C, AE F) Applicant's post-hearing credit report stated that all of his accounts are in good standing. (AE E)

Character Evidence

Post-hearing, Applicant submitted a character letter from a senior supervisor at the military installation where he is employed. The letter favorably described Applicant's loyalty, dedication, work ethic, and trustworthiness. (Tr. 64-65; AE K)

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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal state, or local tax returns or failure to pay annual Federal, state, or local income tax as required.

The evidence of record establishes concerns under AG ¶¶ 19(a), 19(c), and 19(f). Further review is necessary.

AG ¶ 20 lists six 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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. Sep. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶ 20(b) is applicable in part. Although costs of relocating for a voluntary job change do not come within the scope of this mitigating condition, Applicant's moving costs certainly played a significant role in his financial difficulties. That said, AG ¶ 20(b) is applicable, in part, because of the costs associated with his father-in-law's open-heart surgery post-recovery period, and his wife's loss of income.¹

¹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable

AG ¶¶ 20(d) and 20(g) are fully applicable. Applicant recognized that his finances had gotten out of control and set up payment plans with his state tax authority and two creditors. He entered into payment plans with his creditors and has a track record of making timely payments with all three creditors. Applicant took the extra step of retaining the service of a credit repair company to improve his credit. His corrective action reflects a desire on Applicant's part to regain financial responsibility. AG ¶ 20(e) is not relevant.

Although none of the three debts have been paid in full, Applicant is making progress and has established his financial responsibility in a deliberate and measured way. With this in mind, the adjudicative guidelines do not require that an applicant be debt-free. The Appeal Board has established the following basic guidance for adjudications in cases such as this:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be responsible and reasonable. Given his resources, he has initiated a pragmatic approach to the repayment of his three SOR debts and is making a good-faith effort to resolve those debts.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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

manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's years of employment as a defense contractor while successfully holding a clearance weigh in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts are being resolved. He has provided evidence of being a productive, loyal, and responsible employee. Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt repayment.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

Conclusion

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

ROBERT TUIDER
Administrative Judge