



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 19-01057 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

05/11/2020

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. A Statement of Reasons (SOR) was issued under Guideline F, financial considerations, due to six collection accounts, delinquent Federal income tax, and a state tax lien. He provided sufficient evidence addressing his financial difficulties and delinquent obligations. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 24, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF acted under Executive Order 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 for Determining Eligibility for Access to Classified Information (AG) effective within the DoD on June 8, 2017.

On July 1, 2019, Applicant answered the Guideline F allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (SOR Response) On September 3, 2019, DOHA issued a Notice of Hearing scheduling a hearing to be conducted on September 26, 2019. On September 10, 2019, for good cause the hearing was cancelled. On December 12, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on January 17, 2020.

Nine Government exhibits (Ex. 1 – 9) were admitted into evidence without objection. Applicant and his wife testified, as reflected in a transcript (Tr.) received on January 29, 2020. The record was held open following the hearing to allow Applicant to submit documentation. On March 2, 2020, six documents were received and admitted into evidence without objection as Ex. A – F.

Findings of Fact

In Applicant's answer to the SOR, he disputed a U.S. Department of Veterans Affairs (VA) debt and admitted the five collection accounts and the indebtedness for Federal income taxes and the state tax lien listed in the SOR. After a thorough review of the testimony, pleadings, and exhibits, I make the following findings of fact.

Applicant is a 36-year-old senior items analyst who has worked for a defense contractor since January 2018 and seeks to obtain a security clearance. (Tr. 6) He married in December 2013 and has a 16-year-old stepchild. He has two children, ages 8 and 10, from previous relationships. (Ex. 1, Tr. 34, 67) He is current on his \$1,750 monthly child support obligations. (Tr. 43) In January 2020, his 8-year-old son moved to the same state where Applicant resides, which may lessen the amount of support he will have to pay for his son. His annual salary is currently approximately \$97,500. (Tr. 46) Overtime pay is possible with his position, which would increase his yearly income. (Tr. 46)

Applicant's wife is currently not working outside of the home, but is currently receiving approximately \$4,000 monthly in workers' compensation due to an on-the-job injury incurred in November 2019. (Tr. 46, 48, 50) She is currently in physical therapy. (Tr. 49) When injured, she was a senior logistics coordinator working in Iraq. (Tr. 49, 51) She worked in Iraq in 2012 and 2013 and again from 2018 to 2019. (Tr. 52) He met his wife when both were working as contractors at the same overseas location.

From March 2004 to February 2012, Applicant honorably served on active duty with the Army National Guard. He separated as a staff sergeant (E-6). (Ex. 2, Tr. 26) While on active duty, he had two tours to Iraq and one tour to Afghanistan. (Tr. 30) The U.S. Department of Veterans Affairs rates Applicant's disability at 70 percent due to post traumatic stress disorder (PTSD). (Tr. 9) His retirement and disability pay is approximately \$1,600 monthly. (Tr. 9) From February 2012 to May 2016, he worked as a civilian contractor at Bagram, Afghanistan. (Ex. 2, Tr. 34) While overseas for two years, he gave

his sister \$500 monthly. (Tr. 36-37) He continues to provide a few hundred dollars monthly in financial assistance to his two younger sisters and younger brother. (Tr. 37, 40)

Applicant got behind on his finances when he returned from overseas. When he returned, he obtained a job at a much reduced salary. (Tr. 54) His salary went from between \$87,000 and \$133,000 per year, when he was working overseas, to \$32,000 to \$36,000 annually when he returned to the United States. (Tr. 54) The cost of living and his child support obligations also contributed to his inability to pay his obligations.

The SOR alleges six collection non-tax debts totaling \$9,811 of which three are Department of Education accounts that total \$4,131. One of the collection accounts was a \$4,416 VA debt (SOR 1.f), which Applicant disputed. He owed \$10,079 in Federal income tax for tax years 2012, 2013, 2015, and 2017 (SOR 1.g). He was \$1,665 delinquent for a state income tax lien (SOR 1.h). In 2018 a state tax lien was entered for tax year 2013. (Tr. 67) He had filed his 2013 state income tax return in April 2014. (Ex. E, Tr. 24, 66) He has been repaying his Federal tax delinquency under a repayment agreement established with the Internal Revenue Service (IRS) in February 2017.

Applicant incurred a \$1,026 debt for the purchase of a computer (SOR 1.a). (Tr. 54) The account had gone to collection, but the debt was paid in July 2019. (Ex. A, Tr. 8) Four times he requested documentation from the creditor showing the debt has been paid, but received no response. (Ex. A) He incurred a \$238 debt (SOR 1.b) for insurance that went to collection. The debt was incurred when he changed insurance companies. (Ex. 4) The debt was paid in June 2019. (Ex. B) He has an installment agreement to pay the three Department of Education collection accounts (SOR 1.c, \$480; SOR 1.d, \$1,101, and SOR 1.e, \$2,550). (SOR Response) As of February 2019, the amount owed on his three Department of Education accounts was \$4,890. (SOR Response) As of the hearing date, the amount owed was \$3,800. (Tr. 59) In January 2020, he paid \$1,000 and entered into a repayment agreement to pay the education debts by April 2020. (Tr. 20, Ex. C, Ex. E)

When Applicant responded to the SOR, he disputed the VA \$4,416 collection account (SOR 1.f). Applicant believes the debt may have been incurred for personal equipment that he asserted he had turned in when he left the National Guard. (Tr. 23) He had turned in the equipment and received a hand receipt, but believed he was still being held responsible for the equipment. (Tr. 23) The debt was paid in full on August 28, 2014. (Ex. D)

Applicant hired an accounting firm to submit his Federal income tax returns. (Ex.3 page 29) For tax years 2011 and 2012, he received Federal tax refunds of \$1,093 and \$1,214. (Ex. 3 pages 7, 8) For tax year 2013, he owed Federal income tax of \$5,497 on an income of \$133,134. (Ex. 3 pages 10, 11, 30, 36, and 37) For tax year 2014, he received a \$280 refund on income of \$89,329. (Ex. 3 page 45) For tax year 2015, he owed \$1,687 in Federal income tax on income of \$87,354. (Ex. 3 pages 13, 15) For tax year 2016, he received a tax refund of \$328. (Ex. 3, pages 19, 26, and 59) The IRS applied \$185 of his refund to his 2012 Federal income tax debt. (Ex. 3 page 26)

In April 2014, Applicant entered into an installment agreement with the IRS to repay his tax indebtedness then at \$5,497. (Ex. 3 page 34, SOR Response) That installment agreement ended when a required monthly payment was not made. In February 2017, he made another repayment agreement with the IRS to have \$185 automatically deducted monthly from his checking account. (Ex. 4, Ex. D, Tr. 24, Tr. 25, Tr. 76) The installment agreement with the IRS covers the \$10,079 in taxes owed for tax years 2012, 2013, 2015, and 2017 (SOR 1.g). He provided documentation showing he made six monthly payments of \$185 each: in August 2019, September 2019, October 2019, November 2019, January 2020, and February 2020. (Ex. E). He also made a \$190 payment in September 2019 and a \$500 payment in January 2020. (Ex. E, Tr. 76) His total payments since August 2019 have been \$1,960. Additionally, tax refunds were intercepted and applied to his tax liability. (Tr. 78)

In Applicant's August 2018 Electronic Questionnaires for Investigations Processing (e-QIP), he acknowledged he had failed to file or pay his Federal income tax as required by law, and he acknowledged the state tax lien. (Ex. 1) He explained that he married in 2013 and did not file his taxes in that state because he resided in another state. The state informed him he owed \$9,300, however the tax lien was for \$1,665. As of January 21, 2020, he had no state tax liability. (Ex. F)

Applicant and his wife are current on their monthly vehicle payments of \$442 and \$500 each. (Tr. 45-46) They are current on their \$1,450 monthly rent. (Tr. 47) He is not receiving calls or letters from creditors demanding payment. The move to his current location resulted in him paying \$1,000 less in rent, \$200 less in transportation expenses, and having a lower cost of living. Applicant believes he has \$1,500 to \$1,700 per month more income to address his debts following his move to his current state. (Tr. 81)

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 must be considered 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, these guidelines are applied 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 adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge

must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes 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 income tax returns or failure to pay annual Federal, state, or local income tax as required."

Applicant admitted the delinquent obligations in the SOR except, as noted, the VA debt, which he disputed. He owed Federal income taxes and had a state tax lien entered against him. The record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing mitigation. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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

(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 has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board stated in ISCR Case No. 17-00263 (App. Bd. Dec. 19, 2018) that "an applicant must demonstrate a plan

for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.”

Applicant’s delinquent debts are not numerous nor is the total amount of debt extremely large. He had owed six collection debts totaling less than \$10,000 and had two tax obligations totaling less than \$12,000. Three of the six collection accounts were for student loans, which initially totaled less than \$5,000. Applicant has paid the computer debt (SOR 1.a), the insurance debt (SOR 1.b), the VA debt (SOR 1.f), and the state tax lien (SOR 1.f). He is making payments on the remaining two obligations, the student loans and Federal tax debt (SOR 1.c – 1.e and SOR 1.g). AG ¶ 20(d) applies to the debts he has paid and the additional debts that he has been repaying under established repayment agreements. AG ¶ 20(g) applies to the state tax lien, which has been paid and the Federal tax debt for which he has a repayment agreement with the IRS and is in compliance with that agreement.

AG ¶ 20(a) has some applicability as well. When Applicant returned from his overseas employment to the United States, his annual income dropped from between \$133,000 and \$87,000 annually to \$32,000 annually, which contributed to his financial delinquencies. He made a number of moves, at his expense, before he arrived at his current location. His move to his current residence decreased his living expenses by \$1,500 to \$1,700 monthly. His current annual salary is approximately \$97,500. His VA disability payment is an additional \$19,000 annually. His wife’s workers’ compensation is currently \$4,000 monthly. Although AG ¶ 20(c) does not apply because he has not received financial counseling, there are clear indications that the problem is being resolved and is under control.

An applicant is not required to establish that he has paid each of the delinquent debts in the SOR. An applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. This he has done.

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(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 common sense 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. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's service to the U.S. military in hostile territory with two tours in Iraq and one in Afghanistan. His military service merits considerable respect. Additionally, I considered his work as a civilian contractor in Afghanistan from February 2012 to May 2016, which also merits respect.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant had a small amount of student loans in collection, originally under \$5,000, which had been reduced to \$3,800 at the time of the hearing. He has since made a sizable \$1,000 payment and made an arrangement to pay the remainder. He has a repayment agreement with the IRS and has provided documentation showing he is honoring that agreement. The other delinquent debts of concern listed in the SOR have been paid. His move to his current location has sizably reduced his living expenses. He is current on his monthly obligations and is not receiving any calls or letters from creditors demanding payment. His finances are under control.

The law and regulations, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid, it is whether Applicant's financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions or doubts about his judgment, reliability, trustworthiness or his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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, Financial Considerations: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge