



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



In the matter of:)
)
) ISCR Case No. 19-01921
)
Applicant for Security Clearance)

Appearances

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

July 30, 2020

Decision

TUIDER, Robert, Administrative Judge:

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

Statement of the Case

On May 10, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On June 28, 2019, 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 August 1, 2019, Applicant submitted his Answer to the SOR.

On October 22, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to an administrative judge (AJ-1); on November 6, 2019, the case was reassigned to another administrative judge (AJ-2); on December 4, 2019, the case was reassigned to another administrative judge (AJ-3); on January 6, 2020, the case

was reassigned to me (AJ-4). On January 27, 2020, DOHA issued a notice of hearing scheduling the hearing for February 27, 2020. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) 1 through 27, which were admitted without objection. I held the record open until March 31, 2020, to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE 28 through 30, which were admitted without objection. On March 6, 2020, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant admitted SOR ¶¶ 1.a – 1.d, 1.g – 1.l, and 1.n, with explanations, and denied SOR ¶¶ 1.e, 1.f, and 1.m, with explanations. Applicant's admissions are incorporated or adopted herein as findings of fact. Additional findings of fact follow.

Background Information

Applicant is a 53-year-old data collector employed by a defense contractor since November 2007. He seeks to retain his secret security clearance, which is a requirement of his continued employment. (SOR Answer; Tr. 15-18, 58, 60; GE 1; AE 9, AE 12)

Applicant graduated from high school in May 1985. He was awarded an associate's degree in criminal justice administration in May 1992, and a bachelor of science degree in criminal justice in May 1999. (GE 1; Tr. 18-21) Applicant was married from December 2005 to June 2010, and that marriage ended by divorce. He has a 15-year-old daughter from his marriage, who lives with his former spouse. Applicant pays his former spouse \$268 monthly for child support. (Tr. 25, 57-58; GE 1; AE 8, AE 13)

Financial Considerations

Applicant's responsibility for the 14 delinquent SOR debts, totaling \$23,987, is established in part by his SOR Answer; his May 2018, May 2019, and October 2019 credit reports; his December 11, 2018 Office of Personnel Management Personal Subject Interview (OPM PSI); and his hearing testimony. At the hearing, it was determined that the debts alleged in SOR ¶¶ 1.d and 1.e were duplicate debts. (SOR Answer; Tr. 71-77; GE 2 – 5)

Applicant's financial problems originated when he was married to his former spouse. At that time, he was employed as a railroad conductor, owned a home, had two paid-off automobiles, and had good credit. In 2007, at age 40, he had a heart attack. He testified that his former spouse "actually started to max out everything (credit cards) like as if she was leaving. . . [s]o shortly after, she filed for divorce and basically took most of the house." (Tr. 26-27, 28)

Applicant's divorce and ongoing relationship with his former spouse have been very contentious. (Tr. 24; AE 4) The divorce decree required, among other things, that

Applicant's spouse pay him \$4,590 at a rate of at least \$50 per month with interest accruing at the statutory rate until paid in full, to reimburse him for the SOR ¶ 1.a. debt, discussed below. Applicant's spouse was also required to pay him \$945 as replacement cost of items of clothing she wrongfully sold, destroyed, or disposed of, as well as several other debts the court determined she was responsible for during their marriage. Applicant's spouse refused to honor her court-ordered debt payments, leaving Applicant responsible. (SOR Answer; Tr. 31-32, 51; AE 1)

After the divorce, Applicant had visitation rights to see his daughter every week. In March 2018, the local family law court allowed Applicant's former spouse and daughter to relocate to another city within the state. The modified court order reduced Applicant's visitation rights to seeing his daughter every other weekend. He also incurred visitation travel costs and the court increased his monthly child support payments because his spouse moved to a higher cost area. (Tr. 54-55, 58, 60; AE 5, AE 10, AE 13)

In February 2013, Applicant was rear-ended, with his daughter in the car, in an automobile accident that caused him to be out of work for approximately five months. Between 2013 and 2017, Applicant was in and out of the hospital for surgeries and other ailments such as valley fever and thoracic outlet syndrome, causing him to play catch up with bills and child support. At times, he was able to receive short-term disability (STD) funds. (SOR Answer; Tr. 27-29, 32, 39-40, 61, 66-67; AE 2, AE 16, AE 26)

However, if his savings and the money he received from STD did not cover medical bills or child support, he would borrow money from his parents, to stay current. Moreover, on the rare occasion he had a child support arrearage, the arrearage was automatically taken out of the following year's income tax refund. Applicant has always made paying child support a priority and is current on his child support obligations. (SOR Answer; Tr. 55-57, 67; GE 2; AE 7, AE 27)

In addition to Applicant's own medical problems, his daughter was diagnosed with scoliosis in 2018. Per his divorce decree, he pays for his daughter's medical insurance and 55% of her uncovered medical bills. Applicant believes some of the medical bills discussed below pertain to his daughter. His former spouse does not inform him of their daughter's medical bills when they are incurred, and he typically is not aware of them until they are delinquent. Because of these various medical issues, "[a]ll the medical bills started racking up." Applicant summed up his position, "I was overwhelmed by . . . medical bills." In addition, as recently as November 2019, Applicant hit a tire while driving on the freeway that damaged his automobile and caused him to sustain soft tissue damage. This accident caused Applicant to lose two weeks of work and he was required to pay for uncovered automobile repairs and medical treatment. (Tr. 29-31, 34, 51-55, 58-60, 62-65, 71-77; AE 1, AE 2, AE 3, AE 6, AE 11, AE 19 – AE 22)

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

SOR ¶ 1.a - \$11,323 charged-off credit card debt. Applicant's former spouse incurred this debt while she was married to Applicant before filing for divorce. Applicant settled this account for \$3,397 and paid the amount in full on December 27, 2019. As noted, his former spouse was required to reimburse him \$4,590 for her portion of this debt plus interest. To enforce this debt and the \$945 discussed above, Applicant was required to file two post-decree judgment requests after his divorce was final. Applicant was ultimately successful in collecting \$2,090 from his former spouse that he received in three separate payments in January and February 2020. (SOR Answer; Tr. 34-38, 61-62, 65; AE 14, AE 15, AE 18, AE 23, AE 24) **DEBT RESOLVED.**

SOR ¶¶ 1.b – 1.n. The remaining 13 SOR debts are all delinquent medical accounts: 1.b - \$956; 1.c - \$930; 1.d - \$704; 1.e - \$704 (duplicate of 1.d); 1.f - \$613; 1.g - \$483; 1.h - \$437; 1.i - \$362; 1.j - \$323; 1.k - \$234; 1.l - \$50; 1.m – \$1,302; and 1.n - \$5,566 (settled for \$2,784 and paid in full). Post-hearing, Applicant provided documentation showing that he has made payment arrangements to resolve all of these debts, with the exception of 1.n, which is settled and paid in full. (Tr. 38-51; 68-72, AE 28, AE 30) **DEBTS BEING RESOLVED EXCEPT FOR SOR ¶ 1.N WHICH IS RESOLVED.**

Post-hearing, Applicant consulted a financial counselor, who provided him with a strategy on how to pay off or pay down his delinquent medical accounts. Applicant followed the counselor's advice and, as demonstrated by his post-hearing evidence, he is on a path to regain financial responsibility. (Tr. 67, 78-79, 80-83; AE 28) Applicant also submitted a budget that reflects a gross monthly income of \$2,217, with a net monthly remainder of \$418. His budget further reflects that he maintains a modest lifestyle and lives within his means. Applicant is current on his mortgage and other debts. (Tr. 66-68, 79-80; AE 25, AE 29)

Character Evidence

Applicant submitted two character letters, one from his supervisor and the second from a coworker. His supervisor described him as a model employee, hardworking, sincere, and reliable. Applicant's supervisor has known him for a lengthy period and is familiar with his clearance financial issues. Applicant's coworker described him as the first to offer assistance, responsible, and considerate. Both individuals recommend and support continuation of Applicant's clearance. (Tr. 61-62; AE 17)

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 AG ¶ 2 describing 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 clearance 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

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

AG ¶ 20 lists five 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; 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.

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), 20(c), and 20(d) are fully applicable. Applicant had a series of unexpected medical emergencies and automobile accidents. In 2007, he had a heart attack; in 2013, he was rear-ended with his daughter in the car; between 2013 and 2017, he was in and out of the hospital for various surgeries and other ailments such as valley fever and thoracic outlet syndrome; and in November 2018, he was involved in an automobile accident. He lost wages because of missed work after these accidents, surgeries, and hospitalizations for varying periods.

In 2010, Applicant went through a contentious divorce. The fallout from that divorce continues to this day. After his 2007 heart attack, his spouse ran up their joint credit cards before leaving. Although Applicant's divorce decree ordered his former spouse to pay him \$4,590 as her portion of marital credit card debt, and \$945 as reimbursement for his clothing she destroyed, he was only recently able to recover \$2,090 after filing two post-divorce petitions to enforce judgment. In 2018, Applicant's former spouse, along with their daughter, moved to a high cost area within the state that resulted in less visitation, unplanned visitation costs, and increased child support. Applicant is also responsible for paying for his daughter's medical insurance and 55% of her uncovered medical bills. As noted, Applicant's former spouse does not apprise him of their daughter's medical bills as they are incurred and he typically does not receive them until they are delinquent.

Applicant settled and paid his two largest debts, and made payment arrangements for the remaining medical debts. Applicant sought financial counseling late in this process. His explanation, of being overwhelmed, for delaying financial counseling is understandable given the ongoing conditions beyond his control. Applicant has embraced the advice received through financial counseling. He has contacted all of his creditors, settled or set up payment plans, made payments, and is on track to regain financial responsibility. AG ¶ 20(e) is partially applicable for SOR ¶¶ 1.d. and 1.e, because they are duplicate allegations of the same debt.

As noted, Applicant settled and paid his two largest SOR debts. He has made payment arrangements with his creditors for the remaining SOR medical debts. Applicant has made significant or sufficient progress towards regaining 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. Of almost \$24,000 in SOR-alleged delinquent debt, less than \$6,400 remains unresolved. Given his resources, he has initiated a pragmatic approach to the repayment of those remaining medical debts and is making a good-faith effort to resolve them.

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.

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 were resolved or are being resolved. He has provided evidence of being a productive, loyal, and responsible employee. He is a devoted father and places a high priority on ensuring his child support payments are current and that he provides for his daughter to the best of his ability. 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 allegations set forth in the SOR are as follows:

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

Conclusion

In light of all of the record as a whole, it is clearly consistent with the national interest to continue Applicant's security clearance. National security eligibility is granted.

ROBERT TUIDER
Administrative Judge