



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



In the matter of:)	
)	
)	ISCR Case No. 19-02368
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2020

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On September 4, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 effective June 8, 2017 (AG).

Applicant answered (Answer) the SOR on October 6, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2020, and the hearing was convened as scheduled on March 3, 2020. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government’s exhibit list was

identified as hearing exhibit (HE) I. Applicant testified, but he did not offer exhibits at the hearing. The record remained open until March 20, 2020, to allow him to submit documentary evidence. He timely submitted Applicant Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 11, 2020.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.k, with explanations, but denied the remaining allegations in ¶¶ 1.l-1.r. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 48-year-old employee of a defense contractor. He began working at his present job as a test specialist in July 2014. He has worked for this contractor since July 2009, except when he was laid off from November 2013 to July 2014. He holds an associate's degree. He married in 1997, divorced in 2002, and he has two adult children. He was the custodial parent for his children when they were minors. (Tr. 6, 17-20; GE 1, 3)

The SOR alleged that Applicant had 18 student loans in collection status totaling \$47,966. The debts were listed on a credit report from January 2019. (GE 4)

Applicant incurred student-loan debt while attending technical school to receive his associate's degree from 2005-2007. The school he attended ultimately went out of business. He credibly testified that seven of the delinquent student loans (SOR ¶¶ 1.a-1.g) were transferred or sold to a collection agent (SOR ¶¶ 1.l-1.r). He has been making approximately \$500 monthly payments through wage garnishment since approximately late 2016. While Applicant did not provide documentation showing the transfer or sale of the student loans, he provided copies of his bi-monthly earnings statement starting in February 2017 (this was as far back as his company's records could go) through August 2017, and from August 2019 through February 2020, which corroborate his student loan payments (I told Applicant to provide a representative sampling of his earnings statements to include six months showing the start of his payments and six months from the present time, which he did. He was not asked to provide statements for the entire time period). (Tr. 19-25; AE A)

Applicant testified that the amount of his original student loans was approximately \$32,000. He provided documentation showing that his current balance is approximately \$16,700. Applicant admitted having a sporadic student-loan payment history before the garnishment order in 2016. The reasons for his interrupted payments included periods of unemployment and trying to provide for his two minor children as the sole income provider. After the garnishment order, Applicant did not receive any correspondence from any creditors or collection services about his student loans. Four student loans (SOR ¶¶ 1.h-1.k) are shown on the Government's most recent credit report as assigned to a government collection account. (Tr. 25-27; GE 5; AE A-B)

Applicant indicated that his current financial status is much improved. He is currently living with and caring for his elderly mother who owns her home, thus negating any rent for Applicant. He provided a recent credit report showing that he only has two accounts, his student loans and a car payment. He is current on both accounts.

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 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, 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 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant became delinquent on his student loans. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 incurred student loans from 2005-2007. They became delinquent when he could not make his payments because of unemployment and providing for his children. At some point, a successor collection agency acquired his student loans and received a garnishment order in late 2016. Since that time, Applicant's pay has been garnished in the amount of approximately \$500 monthly. While a garnishment is not a voluntary good-faith payment by Applicant, these payments are reducing his student loans and otherwise resolving his debt. His unemployment and family circumstances were conditions beyond his control, but he did not act responsibly by allowing his student loans to go into collection status and require enforcement of payment through a wage garnishment. While the credit reports are confusing as to the actual status of all his student loans (because of transfers, sales and changing account numbers), substantial evidence exists to conclude that Applicant's student loans are being paid by the wage garnishment. He lives within his means and is now current on all his other financial obligations. All the above mitigating conditions have some applicability.

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 commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. I considered Applicant's contractor service, his unemployment, and the circumstances surrounding his indebtedness.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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.r:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge