



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



In the matter of:)	
)	
)	ISCR Case No. 19-02372
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
 For Applicant: *Pro se*
 02/06/2020

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 August 23, 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 September 27, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 21, 2019, and the hearing was convened as scheduled on December 19, 2019. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The

Government's exhibit list was identified as hearing exhibit (HE) I. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record remained open until January 17, 2020, to allow Applicant to submit documentary evidence. He submitted AE B through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 30, 2019.

Findings of Fact

Applicant admitted the SOR allegations, with explanations, and 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 35-year-old employee of a defense contractor. He began working at his present job as a communications security manager in July 2018. He holds a bachelor's and two associate's degrees. He served in the U.S. Army from 2009 to 2013. He deployed to Iraq for a year and received an Army Commendation Medal for his service there. He was an intelligence analyst and held a top secret clearance at that time. He separated with an honorable discharge as a specialist (E-4). He married in 2012, and he has two children. (Tr. 5, 21, 23; Answer; GE 1)

The SOR alleged that Applicant had four charged-off debts and one collection debt totaling approximately \$14,745. The SOR went on to allege six private student loans in collection status totaling \$31,738. The debts were listed on credit reports from January 2019, July 2019, and December 2019.

Applicant credibly testified that six of the debts (SOR ¶¶ 1.g-1.i) were from delinquent private student loans he took out to help pay for college in 2005 to 2007, before he joined the Army. Because of his academic standing, he was required to use private student loans to pay for college. He accumulated approximately \$65,000 worth of student loans. He realized that he could never pay these loans with the college degree he had chosen. He joined the Army and paid his student loans directly from his paycheck, reducing the overall balance to approximately \$30,000. His payment assertions are corroborated by his January 2010 credit report that showed the student loans in good standing. These student loans went into delinquent status after Applicant's discharge, during his unemployment, and after his deferments expired. None of these private student loans appear on Applicant's two most recent credit reports contained in the record. (Tr. 24, 27-29; Answer; GE 3, 7-8)

After his honorable service in the Army, Applicant believed his background as an intelligence analyst put him in a good position to obtain a civilian contractor position. This was not the case, and he struggled to provide for his family during extended periods of unemployment (July 2013-September 2015; January 2016-March 2016; October 2016-May 2017; May 2018-July 2018) and part-time employment (September 2015-January 2016; January 2018-May 2018). He went back to college and obtained his bachelor's degree in 2014 using his GI-Bill benefits and securing federal student loans. He also earned two associate's degrees. (Tr. 21-23)

Applicant established two lines of credit from banks while in the Army in an effort to establish a good credit resume and raise his credit score. While on active duty he borrowed against the credit lines and then repaid them. When he was discharged and became unemployed, he was unable to continue his payments on these credit lines. This resulted in the charged-off debts listed in SOR ¶¶ 1.a-1.b and 1.d-1.e. Applicant credibly testified that he has attempted to negotiate payment plans with the two banks, but they only will accept lump-sum payments, which Applicant is unable to afford. He intends to pay these credit lines when he accumulates the needed finances to do so. Applicant's payment plan includes using the approximately \$7,000 bonus he will receive shortly and his 2019 federal income tax refund, which he expects to be approximately \$10,000 to pay the outstanding credit lines, as well as the deficiency balance on an auto repossession (SOR ¶ 1.c). Applicant's current annual salary is approximately \$75,000. He is current on his rent and both of his older model vehicles are paid. His wife works part time, but mostly provides child care for their two young children, which would otherwise cost approximately \$1,900 monthly. Applicant provided a reference number indicating his payment of the consumer debt listed at SOR ¶ 1.f. (Tr. 23-25, 35, 37-40; Answer; AE D)

Applicant documented his regular payments on his federal student loans, which he incurred while completing his bachelor's and associates' degrees. He intends to continue making these student-loan payments. (Tr. 34, 42; AE B-C)

Applicant provided letters of support from his former supervisor, who was also the former facility security officer (FSO), and his current supervisor, who is the current FSO. Both have the highest regard for Applicant. Applicant disclosed his financial difficulties to both people and they believe he is on his way to financial recovery. Applicant is characterized as a trusted team member who is totally reliable. His former supervisor recommended the retention of Applicant's clearance. (Answer)

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 had a number of delinquent debts. 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; and
- (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.

Applicant's incurred private student loans in 2005-2007, before he joined the Army that he paid while in the Army. They became delinquent after his discharge and subsequent unemployment. These were conditions beyond his control and he acted responsibly by attempting to negotiate settlements with his creditors, but they refused anything other than lump-sum payments. The private student loans no longer appear on his credit report. Applicant plans on using his employment bonus and his expected federal tax refund to pay his remaining debts. He paid one SOR debt and is current on his federal student loans. Since obtaining his current job 18 months ago, he has started his financial recovery. 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 military service, including his deployment to Iraq, 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.l:	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