



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



In the matter of:)	
)	
)	ISCR Case No. 19-03770
)	
)	
Applicant for Security Clearance)	

Appearances

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

09/02/2020

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 April 17, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 the SOR on April 30, 2020, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Appellant on June 16, 2020. The

evidence included in the FORM is identified as Items 4-9 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on June 22, 2020. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A-D. Neither party objected to the other's exhibits and all are admitted. Department Counsel notified Applicant that a divorce decree was not received by her, as stated in his exhibit submission, and Applicant was given an opportunity to submit that evidence. He failed to do so. Administrative exhibits (AD) I and II reflect this correspondence. The case was assigned to me on August 25, 2020.

Findings of Fact

Applicant denied all of the SOR allegations. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 47 years old. He has worked for a government contractor as a technical support specialist since January 2019. He received a certificate from a community college in 2011. His military service includes serving in the Air Force on active duty from 1991 to 2001. He received an honorable discharge for that service. He also served in the Army National Guard from 2002 to 2005. He was also honorably discharged from that service. He is divorced and has two adult children. (Item 4)

The SOR alleged six delinquent debts totaling approximately \$62,000. (Department Counsel withdrew SOR ¶ 1.g. See FORM p. 4.) The debts are comprised of a foreclosed mortgage account and several collections accounts (medical debt, student loans, and an automobile debt). The debts are supported by a credit reports from February 2019 and October 2019, and his statement to an investigator in April 2019. (Items 5-7)

Applicant offered no specific reasons for his financial distress; however, he went through a divorce in 2014 and was unemployed for over two years from January 2009 to November 2011. At the time he was interviewed by a defense investigator in April 2019, he had not received any financial counseling. (Items 4-5) The status of his debts is as follows:

SOR ¶ 1.a-Foreclosed Mortgage Account-(\$42,451). Applicant claims that pursuant to his divorce decree, his ex-wife was responsible for the mortgage payments because she was awarded the house in their divorce. He did not offer the divorce settlement in evidence. His ex-wife failed to make the required payments and the property was sold through foreclosure in April 2016. Court documents show that Applicant and his ex-wife were both named defendants in the foreclosure proceedings. There is no evidence of a deficiency amount owed by Applicant. This debt does not appear on his most recent credit report in evidence. This debt is resolved. (Items 5, 8, 9; AE A)

SOR ¶ 1.b-Collection Account-Repossessed Car-(\$12,709). Applicant acknowledged purchasing this vehicle in his SOR answer, however, he disputed the

amount owed based upon his belief that the company engaged in predatory loan practices. He voluntarily returned the car in March 2017. He has called the creditor several times, but has never received a call back. He is currently disputing this debt with a credit-repair company. This debt is being resolved. (Items 3, 5; AE A)

SOR ¶¶ 1.c and 1.d-Student Loans-(\$4,018; 2,779). Applicant negotiated to have his student loans picked up by another lending service, and his June 2020 credit report reflected that he was current on his student loans, having timely made the last three months payments. These debts are being resolved. (Items 3, 8; AE A)

SOR ¶ 1.e-Student Loan-(\$246). Applicant provided documentation showing this debt was paid in April 2020. This debt is resolved. (AE B.)

SOR ¶ 1.f-Medical Debt-(\$65). Applicant claims he paid this debt, and it does not appear on either his August 2019 or his June 2020 credit reports. This debt is resolved. (AE 7-8)

Applicant also provided documentation related to two other non-SOR financial obligations. He demonstrated that he made all his required car payments from February 2017 through February 2020. That loan is now paid. He also documented that he is current on a line of credit he received in 2017. (AE C-D).

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.

The evidence showed Applicant accrued several delinquent collection debts and a foreclosure. I find 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;

(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 claimed his ex-wife was responsible for making the mortgage payments on the house that she received in the divorce settlement. She did not make the payments and a foreclosure sale resulted. This debt no longer appears on Applicant's credit report. He also brought his two student loans current using a new creditor service and he documented his full payment on a smaller student loan. He is disputing a car repossession debt. His credit reports support that he paid the delinquent medical debt. He has shown responsible and reliable behavior by paying off his recent car debt and making his required payments on his line of credit. There are clear indications that his financial issues are either resolved or being resolved, and that recurrence is unlikely. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) all 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 the facts and circumstances surrounding this case. I considered Applicant's military service, his federal contractor service, and the circumstances surrounding his indebtedness. I am convinced that Applicant will not incur delinquent debts in the future.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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.f:	For Applicant
Subparagraph 1.g:	Withdrawn

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