



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



In the matter of:)
)
) ISCR Case No. 19-02471
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

03/11/2021

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On October 2, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on December 9, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 6, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on February 26, 2020, scheduling the hearing for April 21, 2020. DOHA canceled

that hearing due to DOD restrictions resulting from COVID-19 and issued another NOH on July 14, 2020, rescheduling the hearing for August 7, 2020. I convened the hearing as rescheduled.

Without objection, Department Counsel amended the SOR on August 4, 2020, as follows: (1) SOR ¶¶ 1.i, 1.j, and 1.k were renumbered to SOR ¶¶ 1.g, 1.h, and 1.i, and (2) SOR ¶ 1.j was added, which states:

You are indebted to Attorney General-Chi in the approximate amount of \$21,802.00, for child support arrears. As of your credit report dated July 15, 2020, the account remains delinquent.

(Tr. at 8)

At the hearing, Government Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through L were admitted in evidence without objection. Applicant testified and called one witness. DOHA received the hearing transcript (Tr.) on August 19, 2020. (Tr. at 12-18)

Findings of Fact

Applicant admitted all of the SOR allegations except ¶¶ 1.g and 1.i, which he denied. He is 38 years old. He married in 2003, separated in 2011, divorced in 2019, and has been engaged to be married since April 2019. He has two minor children. (Answer; Tr. at 12, 24, 43; GE 1)

Applicant graduated from high school in 2000. He earned an associate's degree and attended college towards a bachelor's degree. He served honorably in the U.S. military for 15 years, from 2002 to 2017; he deployed four times, in 2004, 2008, from 2013 to 2014, and from 2014 to 2015. He previously worked for two DOD contractors from August 2017 to September 2019, when he lost his job due to issues arising with his security clearance. He was subsequently unemployed from September 2019 to March 2020, during which time he drove for Uber and Lyft. As of the date of the hearing and since March 2020, he worked in the field of information technology for the Air National Guard (ANG). Both Department Counsel and Applicant confirmed at the hearing that Applicant was being sponsored for a security clearance. He was first granted a security clearance while he served in the U.S. military. (Tr. at 6, 22, 33, 42-43, 45, 49-50, 55-56, 71-75, 94, 106; GE 1; AE L)

The SOR alleges five delinquent consumer accounts totaling \$9,333 (SOR ¶¶ 1.a, 1.d, 1.f, 1.h, 1.i), a \$4,068 delinquent student loan (SOR ¶ 1.b), three delinquent debts with the U.S. Government totaling \$2,007 (SOR ¶¶ 1.c, 1.e, 1.g), and \$21,802 in child support arrears (SOR ¶ 1.j). The debts are established by Applicant's admissions and credit reports from 2018, 2019, and 2020. (GE 1-4)

Applicant and his fiancée attributed his delinquent debts to the following factors: (1) his ex-wife's failure to properly handle the family finances; (2) a lengthy divorce,

initiated by him in 2014 but not finalized until January 2019, during which time he learned about the extent of the delinquent debts incurred during his marriage; (3) a 2014 order that he pay \$800 monthly in child support and \$20,000 in retroactive arrears; (4) a 2017 modification of that order increasing his child support to \$2,000 monthly when he became a senior consultant for a DOD contractor and earned approximately \$130,000 annually; and (5) his above-mentioned period of unemployment, during which time he was still required to pay \$2,000 monthly in child support. (Tr. at 17-39, 41-109; GE 1-4; AE A-L)

As of the date of the hearing, Applicant paid six of his ten delinquent debts (SOR ¶¶ 1.c, 1.e-1.i) and he was in the process of resolving the remaining four (SOR ¶¶ 1.a, 1.b, 1.d, 1.j). (AE A-K)

SOR ¶ 1.a is a \$6,096 charged-off car loan for a car Applicant and his ex-wife purchased in around 2009; she was the primary account holder and he was the secondary. Applicant's ex-wife handled the family's finances when he was deployed overseas with the U.S. military. Unbeknownst to him, she did not make the car payments. She also failed to do so during the divorce proceedings, even though he sent her money to make the payments. He accepted responsibility for the loan as part of finalizing his divorce. While he initially had trouble accessing the account since he was not the primary account holder, he made three monthly payments of \$25 between April and June 2020 and two payments of \$50 in July 2020. Documentation from the creditor reflects a balance of \$6,045 as of May 2020. He plans to continue paying the account until it is paid in full. (Tr. at 51-55, 71-74, 104; AE A)

SOR ¶ 1.b is for a \$4,068 student loan in collection. Applicant obtained the student loan to attend college in 2000 and it was placed in forbearance from 2002 to 2017, while he served in the U.S. military. After his 2017 discharge, he forgot about the loan. He did not receive any correspondence from the creditor after having moved several times from the address in which he lived when he obtained the loan. The creditor located him in 2019 and offered him a loan rehabilitation, through which he made a \$107 payment in January 2019 and \$150 monthly payments from February until June 2019, when he lost his security clearance, his pay was significantly decreased, and he eventually lost his job that September. He resumed making payments of \$5 monthly through a rehabilitation program in December 2019. As of June 2020, his balance was \$2,997. (Tr. at 55-59, 74-78, 86, 96-97, 106; GE 1; AE B, C)

SOR ¶¶ 1.c and 1.g are overpayments that Applicant received for his monthly U.S. military housing allowance, in collection for \$573 and \$125, respectively. As soon as he learned about them, he paid \$400 and resolved the outstanding balance in October 2017. He subsequently called the VA several times and verified that he does not owe anything further. (Tr. at 59-61; AE D)

SOR ¶ 1.d is for a \$2,626 credit card in collection. Applicant obtained the credit card in around 2008; his ex-wife was an authorized user. She incurred charges and failed to make payments on the card while he was deployed overseas. He accepted responsibility for the card as part of finalizing his divorce. He located the creditor at the end of 2019 and began making payments. His friends also lent him some money, which

he intends to repay, to help him pay this debt. He testified that the balance as of the date of the hearing was \$2,000. (Tr. at 61-65, 78-79, 99-100; AE E, K)

SOR ¶ 1.e is for \$1,309 in moving expenses in collection. Applicant incurred these expenses when he moved from his last duty station with the U.S. military to a location that was not his home of record. He paid this debt through \$100 monthly automatic deductions from his ANG pay. His September 2018 ANG paystub reflects that this debt was paid. (Tr. at 65-67, 79-80; AE F)

SOR ¶ 1.f is for a \$339 charged-off debt that Applicant incurred during his marriage, though he was unaware of the nature of the debt. He paid it in November 2019, when he accepted responsibility for the debt as part of finalizing his divorce. He acknowledged that he also wanted to resolve this debt upon receiving the SOR. (Tr. at 67-68, 80-82; AE G)

SOR ¶ 1.h is for an electric bill in collection for \$167. Applicant incurred this bill when he moved and incorrectly believed that his deposit would be applied towards it when he discontinued service. He paid it in November 2018. (Tr. at 68-69; AE H)

SOR ¶ 1.i is for a television and internet account in collection for \$105. Applicant opened this account between around 2008 and 2010. Documentation from the creditor reflects that this debt was paid in November 2019. (Tr. at 69-70; AE I)

SOR ¶ 1.j is for \$21,802 in child support arrears. As previously discussed, Applicant was ordered in 2014 to pay \$800 monthly in child support and \$20,000 in retroactive arrears. The state Attorney General's (AG) Office of Child Support (OCS) pulled \$10,000 from his retirement savings account and applied it towards his arrears. In 2017, when his child support obligation was modified to \$2,000 monthly, the state AG's OCS began applying approximately \$1,000 to his \$10,000 arrears balance and the remainder towards his monthly obligation. He was unable to make any payments when he became unemployed, but resumed making his child support payments in March 2020 when he became re-employed. His child support balance as of August 2020 was \$13,194. As of the date of the hearing, he was seeking a modification to his child support order and his outstanding arrears balance to reflect the decrease in his income to \$60,000 annually. (Tr. at 45-51, 82-94; AE J)

Applicant has earned \$60,000 annually since March 2020. He plans to continue to resolve his delinquent debts. He received debt counseling in 2017. While he considered debt consolidation, he elected to resolve his finances on his own and with his fiancée's advice. He also keeps track of his finances through a credit monitoring service. (Tr. at 45-46, 70, 87-89, 101-109; GE 1; AE K)

Applicant's fiancée testified. She and Applicant began dating in December 2013, when he was legally separated from his ex-wife, and they got engaged in April 2019. She holds a position of public trust in the U.S. Government. She testified that she was aware of Applicant's delinquent debts, knew that he paid several of them, and was in the process of paying his child support arrears. She described him as fiscally responsible and a hard

worker. She testified that she has a high credit score and they expect to combine their finances when they are married. (Tr. at 17-39)

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 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 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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Conditions beyond Applicant's control contributed to his financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He paid the debts in SOR ¶¶ 1.c and 1.g in 2017, SOR ¶¶ 1.e and 1.h in 2018, and SOR ¶ 1.i in 2019. He paid his

child support in SOR ¶ 1.j, as ordered in 2014 and modified in 2017, and he began rehabilitating his student loan in SOR ¶ 1.b in early 2019, until he could no longer afford to do so when he lost his job. He resumed rehabilitating his student loan in December 2019. He also resumed paying his child support when he became re-employed. He intends to continue rehabilitating his student loan and paying his child support, while also seeking a modification of his child support order and arrears to reflect his reduced annual income. Through his divorce, he also took responsibility for and began resolving the debts in SOR ¶¶ 1.a, 1.d, and 1.f, and he also intends to continue to pay these debts until they are fully resolved.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant received debt counseling in 2017. He is resolving his remaining delinquent debts. He keeps track of his finances through a credit monitoring service and with help from his fiancée. I find that AG ¶¶ 20(a), 20(b), and 20(d) are established.

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 relevant 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 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. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. 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.j:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge