



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



In the matter of:)
)
) ISCR Case No. 20-00872
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

12/21/2021

Decision

MURPHY, Braden M. Administrative Judge:

Applicant has resolved more than half of the total amount of debt alleged in the SOR. Several circumstances beyond his control have impacted his finances and his ability to repay his debts. He has provided sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 24, 2016. On June 12, 2020, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD took the action under Executive Order 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG) effective within DOD on June 8, 2017.

In an undated response to the SOR, Applicant admitted each debt alleged and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record without a hearing. On November 23, 2020, Department Counsel submitted the Government's File of Relevant Material (FORM), consisting of five exhibits (Items 1-5). DOHA received Applicant's undated response to the FORM on April 12, 2021. It consisted of a narrative from Applicant (FORM Response), along with four documents, which I have marked as Applicant's Exhibits (AE) A, B, C, and D, all admitted without objection. They are described in the Facts section, below. Applicant did not object to admission of any of the Government's documents. Items 1 and 2 are the pleadings in the case. Items 3, 4, and 5 are admitted without objection. The case was assigned to me on May 17, 2021.

On September 8, 2021, I emailed the parties and reopened the record to allow the parties to submit additional information, including a current credit report. (Hearing Exhibit (HE) I) On September 24, 2021, Applicant submitted several new documents, including a narrative statement about his expenses and debt repayment plan (AE E), a recent paystub (AE F), and three reference letters (AE G). The Government submitted a current credit report (Item 6) and provided narrative comments and objections to Applicant's new submissions. (HE II)

On November 16, 2021, based on representations from Applicant in AE E, I reopened the record again until November 30, 2021, to allow Applicant the opportunity to document any additional payments. (HE III) He responded the same day detailing his current circumstances, discussed in the Facts section, below. His e-mail is admitted without objection as AE H. Applicant did not submit additional documents before the record closed on November 30, 2021.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a through 1.i, all with explanations. His admissions and explanations are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 48 years old. He was certified as an emergency medical technician (EMT) in 1997. (Item 3 at 9) He has been working as a security officer for a government contractor at a U.S. government agency. He has held the same job, with different employers, with a security clearance, since 2005. (Item 3 at 10-11, 25; AE H)

On his October 2016 SCA, Applicant disclosed several delinquent debts. (Item 3 at 26-28) He discussed his debts in his August 2017 background interview. (That interview summary references debts likely listed on a contemporaneous credit report that is not in the record). All of the SOR debts are listed on an October 2019 credit report, though one debt is listed as transferred or sold, with a zero balance. (Item 5)

On his SCA, Applicant did not indicate that he had ever been married. In his background interview, he noted that he had begun a “spouse-like” relationship with a cohabitant. (Item 4 at 3) In his SOR Response, Applicant noted that he had recently “separated from [his] wife,” and intended to downsize until he made ends meet. (Item 2) He included a March 2021 final divorce order with his FORM response. (Item A). It reflects that Applicant and his wife married in September 2017, and last cohabitated in early March 2019. The divorce petition was filed by his wife. (Item A).

In his FORM Response, Applicant said he had paid off most of his debts and was working on the rest. The financial impact of his recent divorce is unclear. Applicant and his former wife had divided their marital assets before the divorce was finalized, and they mutually agreed to be separately responsible for their individual debts, none of which are detailed in the divorce decree. (AE A)

Applicant’s debts predate his divorce. He indicated in his background interview that he fell behind on his debts when he gave money to his parents when they were in financial need. (Item 4) The SOR alleges that Applicant has incurred just under \$37,000 in delinquent debt. (Item 1) The debts are listed on an October 2019 credit report. (Items 2, 5).

SOR ¶ 1.a is a \$17,647 debt placed for collection. Applicant settled the debt for \$6,176 in April 2021 and provided verifying documentation. (FORM Response; AE D) This debt is resolved.

SOR ¶ 1.b (\$5,316) is a debt placed for collection by a bank. Applicant said he planned to pay it but noted that he had not received a settlement offer. This debt is still listed on a current credit report. (Item 6) This debt is not resolved.

SOR ¶ 1.c (\$2,896) is a debt placed in collection by a consumer account or a bank. Applicant said he received a settlement offer but had not addressed it. He planned to pay a small amount off each month. This debt is not resolved.

SOR ¶ 1.d (\$2,281) is a debt placed in collection by a phone company. Applicant asserts that the debt relates to an allegation from the creditor that he did not return certain equipment. Applicant intended to resolve the debt with his tax refund. This debt is not resolved.

SOR ¶ 1.e (\$1,803) is a debt placed in collection by a bank. Applicant intended to resolve the debt once he paid his taxes. (Item 2) This debt remains listed on a recent credit report. (Item 6) This debt is not resolved.

SOR ¶ 1.f (\$1,285) is a debt placed in collection by a bank. Applicant provided documentation with his FORM Response that the debt was resolved by garnishment in July 2018. (FORM Response; AE B) Although the debt remains listed on a recent credit report (Item 6), it is nonetheless resolved.

SOR ¶ 1.g (\$1,095) is a debt placed in collection by a phone company. Applicant provided documentation with his FORM Response that the account has been paid. (AE C) The debt is resolved.

SOR ¶ 1.h (\$472) is a past-due medical debt. Applicant was not initially aware of the debt until his interview but said he will pay it. It remains listed as unpaid on a September 2021 credit report. (Item 6) This debt is not resolved.

SOR ¶ 1.i (\$4,167) is a debt that has been charged off. Applicant admits the debt and said he would pay it. The debt is listed on Item 5, his October 2019 credit bureau report, as having been transferred or sold, but the creditor is not identified, and no balance is listed. The debt is not listed on a more recent credit report, Item 6. As no balance is indicated, the debt is considered resolved.

Applicant's September 2021 submissions included a narrative statement about his expenses and debt repayment plan. (AE E) He pays \$650 a month in rent, has a \$700 monthly car payment, pays \$264 in insurance, \$86 for a cell phone, and about \$215 for cable and internet, expenses totaling \$1,915 per month. Other basic monthly staples, such as food, utilities, and gas for his car, are not noted. (AE E) He included a bimonthly paystub for August 2021. He earned gross income of about \$2,921, and net income of about \$2,088 bimonthly (or \$4,176 per month). (AE F) For 2021 to that point (eight months), he had earned a gross total income of about \$46,055. (AE F) This suggests a total annual gross income for 2021 of just over \$69,000. ($\$46,055 \text{ divided by } 8 \text{ months} = \$5,756.87$, and $\$5,756.87 \text{ times } 12 \text{ months} = \$69,082.50$).

In September 2021, Applicant indicated that he had \$7,054 with which to pay his remaining debts (the "full amount") by the end of November 2021, instead of paying \$258 per month for three years. He also said that he planned to refinance his auto. (AE E)

Given this representation from Applicant, I reopened the record again, on November 16, 2021, until November 30, 2021, to allow him to submit documentation of any additional payments towards his SOR debts. (HE III) The same day, Applicant responded and reported that in early October 2021, he had been injured in an auto accident. He said that his injuries have left him unable to work at least for the time being, as he requires digital dexterity to fire a weapon in order to work as an armed security guard. His post-accident medical treatment is ongoing; it will be followed by physical therapy as he attempts to qualify to return to his job. He is currently out of work, with no short-term or long-term disability. His repayment plan for his SOR debts is therefore on hold, as his savings are used for his everyday bills. (AE H)

Applicant provided two reference letters from co-workers. (AE G) Both of them attest that Applicant had been employed as a full-time security police officer at a government facility since about 2004. He is a valued and highly knowledgeable team member and has significant tenure in the job. He often volunteers for extra duty. He is a good and supportive friend and a good colleague. (AE G) He also provided a letter from

his landlord, who notes that Applicant pays on time, is a quiet occupant, and is a “stellar renter.” (AE G)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Applicant is employed as a security guard with a government contractor. He works at another U.S. government agency. Under DOD Directive 5220.6 ¶ 2.2, that federal agency is among those that have an agreement with the DOD under which DOHA is to adjudicate security clearance cases such as Applicant’s.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 has incurred just under \$37,000 in delinquent debt. He admitted all the debts, and they are established by an October 2019 credit report. AG ¶¶ 19(a) and 19(c) apply.

Security concerns having been raised, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)). Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the financial considerations security concerns.

The following mitigating conditions under AG ¶ 20 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.

Applicant had been gainfully employed as a security officer for about 16 years, until his recent accident rendered him unable to work, at least temporarily. Some of his debts are resolved, but others are ongoing. AG ¶ 20(a) does not fully apply.

Applicant's debts appear to have occurred because he fell behind on his accounts after helping his parents out financially. To some extent, this was a circumstance beyond his control. Applicant has also been through a recent divorce, though it is not clear that the divorce had a significant financial impact on him. However, in considering application of this mitigating condition, his recent, unforeseen accident has left him unable to work and to address his debts. This is clearly a circumstance beyond his control that is impacting his finances and his ability to address them. AG ¶ 20(b) therefore has some application.

Applicant has resolved about half of his debts, as he settled his largest debt (SOR ¶ 1.a), paid another through garnishment several years ago (SOR ¶ 1.f), and paid another debt recently. (SOR ¶ 1.g) The debt at SOR ¶ 1.i, transferred or sold with a zero balance, is resolved. He declared an intention to resolve his remaining debts, by downsizing and reducing his expenses. Applicant had a reasonable plan in place before his recent accident. AG ¶ 20(d) applies.

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 common sense 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. My comments under Guideline F are incorporated in my whole-person analysis. Under AG ¶ 2(a), 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.

Applicant established that a significant portion of his SOR debts have been resolved. They are due to a variety of circumstances, including supporting his parents financially, perhaps when he was unable to afford to do so. He has also been through a recent divorce, though the financial impact of this event is not clear. His recent accident has left him unable to work and to address his remaining debts. Given his documented efforts in resolving his SOR debts and reducing his overall debt load and his long career as a security officer at his current position, I believe he has carried his burden of mitigating the financial security concern shown by his debts, some of which remain. Overall, the record evidence leaves me without questions and 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:

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| Paragraph 1, Financial Considerations: | FOR APPLICANT |
| Subparagraphs 1.a – 1.i: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge