



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03309
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on March 17, 2020, and requested a hearing before an administrative judge. The case was assigned to me on November 23, 2021.

The hearing was convened as scheduled on December 20, 2021. Government Exhibits (GE) 1, 5, and 6 were admitted in evidence without objection. The objection to GE 2 was sustained. The objections to GE 3 and 4 were overruled. Applicant testified and submitted Applicant's Exhibits (AE) 1 through 24, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE 25 through 38 (38 is the email; 25 through 37 are the documents attached to the email) and admitted without objection. The

hearing transcript (Tr.) was received on December 30, 2021. Applicant submitted corrections to the transcript. (AE 35-36) His corrections make the transcript more accurate. Anything he added to the transcript beyond a correction will be treated as a statement by Applicant and considered as evidence.

Findings of Fact

Applicant is a 43-year-old prospective employee of a defense contractor. He will be hired if he obtains a security clearance. He is attending college and is a few months from earning a bachelor's degree. He has a master's degree from an Australian university. He married in 2002 and divorced in 2014. He has a child from the marriage. He married his current wife in 2021. (Tr. at 20-21, 24-25, 27-28, 33, 35, 40, 48; Applicant's response to SOR; GE 1; AE 1, 12-19, 34)

Applicant was born in Sri Lanka. He immigrated to the United States in 2003, and he became a U.S. citizen in 2011. His first wife is also from Sri Lanka. Applicant and his first wife owned a business from 2005 to 2014. The business ultimately failed. Applicant had a low-paying job as a collections agent for a bank from about January 2013 until he quit in January 2014. Applicant had financial problems resulting from the failure of his business, his divorce, and his inability to find a better-paying job. Applicant and his ex-wife decided that their best option was for Applicant to move back to Sri Lanka in 2014 with their child and live with Applicant's parents while his ex-wife completed her degree in the United States. (Tr. at 23-24, 35, 42-43; Applicant's response to SOR; GE 1; AE 2, 25, 26, 37, 38)

Applicant's first wife completed her degree in 2017. Applicant brought their child back to the United States, and the child lives with Applicant's ex-wife. Applicant returned to Sri Lanka, where he still lives. His current wife is a citizen and resident of Sri Lanka. (Tr. at 21, 27-28, 39)

The SOR alleges nine delinquent debts totaling about \$28,000. Applicant admitted owing all of the debts in the SOR, with the exception of the \$145 debt to a cable television provider (SOR ¶ 1.h), which he believes was paid by his ex-wife. He successfully disputed the debt with Experian in 2018. All of the remaining debts became delinquent in 2013 or 2014, except the \$576 debt in SOR ¶ 1.g, which became delinquent in 2015. They are all listed on the 2018 credit report. On the December 2021 credit report, all but the \$576 debt in SOR ¶ 1.g were past the seven-year reporting period and were no longer listed. The \$576 debt in SOR ¶ 1.g was listed on the December 2021 Experian and TransUnion credit reports. The TransUnion report estimated that the debt will be removed in February 2022. It is not listed on the December 2021 Equifax report. (Tr. at 29-31, 49-52; Applicant's response to SOR; GE 3-6; AE 9-11, 27, 28, 37, 38)

Applicant paid \$100 and \$236 debts that were not alleged in the SOR in April 2019. He has not paid any of the debts alleged in the SOR. The cost of living is low in Sri Lanka, but the wages are also. His wife has a bachelor's degree and works at a university, but only earns the equivalent of about \$240 per month. Applicant realized

that education was his path to a better life. He continued with his education in Sri Lanka, primarily online with U.S. universities, and obtained student loans for his tuition and living expenses. He plans to obtain his bachelor's degree, return to the United States, get a good job, bring his wife to the United States, and pay his debts once he has the means to do so. If he obtains a security clearance, he will be hired by a defense contractor as a linguist, earning about \$86,000 per year. He has about \$60,000 in deferred student loans. He stated that his ex-wife understands that he is unable to pay child support for their child. (Tr. at 20-21, 25-34, 36-41, 47-48; Applicant's response to SOR; GE 3-6; AE 2-8, 20, 21, 29, 30, 34, 37, 38)

Applicant submitted letters attesting to his excellent job performance and strong moral character. He is praised for his reliability, dependability, work ethic, honesty, responsibility, intelligence, trustworthiness, professionalism, and integrity. (AE 22-24)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 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 has a history of financial problems, including multiple delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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;

(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 admitted owing all of the debts alleged in the SOR, except the \$145 debt to a cable television provider (SOR ¶ 1.h), which he believes was paid by his ex-wife. That debt is mitigated.

Applicant attributed his financial problems to the failure of his and his ex-wife's business, his divorce, and his inability to find a better-paying job than the one he had before he quit in 2014. Applicant and his ex-wife decided that their best option was for him to move back to Sri Lanka in 2014 with their child and live with Applicant's parents while his ex-wife completed her degree in the United States. He brought their child back to the United States in 2017, but he returned to Sri Lanka where he continues to live.

If Applicant obtains a security clearance, he will be hired by a defense contractor as a linguist, earning about \$86,000 per year. He has about \$60,000 in deferred student loans. He paid two small debts that were not alleged in the SOR in 2019. His long-term plan is to obtain his bachelor's degree, return to the United States, get a good job, bring his wife to the United States, and pay his debts once he has the means to do so. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Applicant does not have a track record that would enable me to project with any degree of certainty that he will complete his long-term plan and pay his debts.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his

debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge