



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



In the matter of:)
)
) ISCR Case No. 19-01803
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Eric Eisen, Esq.
03/22/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the financial considerations security concerns by resolving and paying his delinquent debts. National security eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on August 15, 2018. On October 15, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 26, 2019, and requested a hearing before an administrative judge (Answer). The case was assigned to me on June 3, 2020, but the hearing was delayed due to the COVID-19 pandemic. On March 3, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 13, 2021. On April 8, 2021, Applicant’s counsel entered his appearance and requested a continuance. I overruled Department Counsel’s objection to Applicant’s continuance request, and the hearing was scheduled for May 18, 2021. It was convened as scheduled via video teleconference on the Defense Collaborative System (DCS).

Government Exhibits (GE) 1 through 8 and Applicant Exhibits (AE) A through O were admitted without objection, and Applicant testified. I marked the March 3, 2021

prehearing scheduling order as Hearing Exhibit (HE) I; Department Counsel's exhibit list as HE II; Department Counsel's discovery letters as HE III; Applicant's updated Answer to the SOR as HE IV; and Applicant's March 20, 2021 brief and updated SOR Answer as HE V. The record was held open until June 1, 2021, to allow Applicant to submit additional documentation.

On May 27, 2021, Applicant's counsel submitted documentation that I marked as AE P through U. Department Counsel had no objections to Applicant's post-hearing submissions but made additional argument. Applicant's counsel objected to Department Counsel's additional argument. I initially sustained that objection, and closed the record; however, Department Counsel reminded me that during her closing argument there were technical connectivity issues. As a result, I allowed both parties to make additional written closing arguments. I marked the series of emails regarding these issues, including the arguments, as HE VI.

DOHA received the transcript (Tr.) on June 8, 2021. After reviewing Applicant's counsel's post-hearing submissions, I gave him the opportunity, until the close of business on June 8, 2021, to clarify a few issues and submit additional documentation. He submitted additional documentation on June 9, 2021. His submission was delayed due to a medical procedure. I overruled Department Counsel's timeliness objection and admitted the documents as AE V through Y. I marked the series of emails regarding these issues as HE VII, and the record closed.

Findings of Fact

Applicant is 35-years-old and has been with his partner since September 2013. He was previously married and divorced two times (September 2006 to April 2007 and September 2008 to March 2013). He has a ten-year-old daughter with his second wife and an almost seven-year old daughter and a four-year-old son with his current partner. She has a 13-year-old daughter from previous relationship who lives with them. (GE 1; Tr. at 10-12, 104)

Applicant received an associate's degree in general studies in 2010 and a bachelor's degree in business administration in 2012. Between 2008 and 2017, he worked as a dual-status technician, serving in the Army National Guard (ARNG) and as a civilian employee for the Department of the Army (DOA). He was honorably discharged as a staff sergeant, after serving multiple deployments to Iraq, Jordan, Kuwait, and Germany. His last role for the DOA was as a staff accountant. He has worked as a senior financial accounting analyst for his current employer, a Defense contractor, since August 2020. He has held a secret security clearance since 2008. (GE 1; Tr. at 10-12, 25-26, 79, 86-87, 112-113)

Applicant's multiple ARNG deployments negatively affected his second marriage, and his oldest daughter was less than a year old when he deployed to Iraq for a year-long tour. Applicant and his second wife divorced in 2013 following his return from a deployment, and he was court-ordered to pay \$1,200 monthly in child support for his oldest daughter. The child support payments were almost half of his take home pay. He

was also responsible for all of their marital debt, including the mortgage for their home. These debts totaled more than \$50,000, not including the outstanding balance of their mortgage. (GE 1; Tr. 27-31, 104-105)

Shortly after his second divorce, Applicant entered into a relationship with his current partner. Her daughter lived with them, and his partner did not work outside their home. He supported them financially, as well as his daughter from his second marriage. Because he was responsible for all of the debt from his last relationship, he was only able to tread water financially. Applicant's middle daughter was born during this period, further straining their finances. In 2017, when the Army told him that he was going to deploy again, this time to Afghanistan, Applicant chose to leave the ARNG. He was unemployed for a 9-month period from August 2017 to April 2018. When he regained part-time employment in April 2018, he earned only \$10 an hour until August 2018. (Tr. 28-30, 90-91)

Prior to his unemployment, Applicant earned approximately \$60,000 annually as dual-status technician. His civilian job with the DOA was tied to his service in the ARNG. When he left the ARNG, he also lost his job with the DOA. Prior to leaving the ARNG and DOA, Applicant filed for Chapter 13 bankruptcy protection in August 2016. He made payments according to the scheduled payment plan until 2018, when he was no longer able to make the full payments due to his lack of income. (GE 1 – GE 5; Tr. 30-31, 74-82)

All three of Applicant's biological children are disabled in some capacity, as is his stepdaughter, who receives Social Security benefits. Due to their children's disabilities, his partner is unable to work outside of their home. (Tr. 99-100, 113, 115)

The mortgage debt alleged in SOR ¶ 1.a, for Applicant's former home, became delinquent in 2014, when he stopped making payments following his second divorce. He resided in the home for approximately 4 years without making payments; however, the mortgage was included in his 2016 Chapter 13 bankruptcy plan. The home was foreclosed upon in 2018, and sold in 2019. Multiple credit reports in the record reflect that the current balance is \$0. Applicant had no additional tax obligations related to this debt. (See Chart)

Applicant's child-support obligations for his oldest daughter became delinquent during the period when he and his wife were separated in 2013, prior to the finalization of their divorce, and when he was unemployed for nine months in 2017 and 2018. The debt alleged in SOR ¶ 1.c reflects the arrears that accumulated during the period that he was unable to pay. Since regaining employment, Applicant has been making his court-ordered payments plus \$100 monthly arrearage payments. These payments are automatically deducted from his paychecks. (See Chart)

Applicant's federal student loans, alleged in SOR ¶¶ 1.d (past due \$587, total balance of \$10,349); 1.f; and 1.h (past due \$281, total balance of \$4,968); totaling, \$21,641, became delinquent between 2015 and 2016 for the above-stated reasons. His most recent credit reports indicate that he has one \$25,804 consolidated federal student loan that is in good standing and was opened in January 2020. He made two automatic

monthly payments of \$165 toward this loan prior to the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020. Applicant testified that he paid and resolved the student loan alleged in SOR ¶ 1.f in 2020, but his documentation does not clearly support his assertions; regardless, his student loans are in good standing, and as discussed below, he has the means to make payments toward his consolidated student loan when the CARES Act expires. (See Chart)

In March 2021, Applicant contacted the creditor for SOR ¶ 1.k. He originally opened this credit card in 2007, and it became delinquent in 2014; however, when he contacted the creditor, it had no record of his account or his social security number. He has not used this account in over ten years. He has the means to pay this debt, but due to a lack of information was unable to make a payment. (See Chart)

When Applicant filed for Chapter 13 bankruptcy protection in August 2016, he was earning \$60,000 annually. He made 16 monthly payments of \$152, per the payment plan. After 16 payments, the monthly payment amount increased to \$366. However, at the time that the monthly payments increased, he was unemployed. He continued to make payments of \$152 for three or four months, until the bankruptcy was dismissed in April 2018. He paid a total of approximately \$3,000 to the trustees of the bankruptcy. Applicant could not afford to refile for bankruptcy after it was dismissed. (See Chart)

SOR ¶	Amount	Type	Original Answer	Status	Proof
1.a	\$103,531, past due \$17,907	Mortgage	Deny	Home Foreclosed and Sold RESOLVED	GE 2 at 1; GE 5 at 3, 5; GE 6; AE A at 23, 25, 27; AE B; AE O at 25-26, 43-44; Tr. at 37-42
1.b	\$13,823	Automobile	Admit	Settled for \$10,000 April 2021 RESOLVED	GE 2 at 2; GE 3 at 9; GE 4 at 42; GE 5; GE 6; GE 7; AE A at 43-45; AE C; AE D; AE O at 45-47; AE R; Tr. at 42-43, 82-84
1.c	\$11,248	Child Support	Deny	Balance: \$12,832 Making monthly payments and arrears payments	GE 1 at 34; GE 2 at 2; GE 3 at 9; GE 4 at 40; GE 5 at 5; GE 6; GE 7; GE 8 at 5; AE A; AE E; AE F; AE N; AE O at 20-25;

					Tr. at 36, 43-47, 110
1.d	\$10,349	Student Loan	Deny	Deferred CARES Act	GE 2 at 2; GE 4 at 43; GE 5; GE 6; AE A at 29-34; AE G; AE O at 27-42; AE S; AE Y; Tr. at 47-54
1.e	\$7,172	Automobile	Admit	Settled for \$2,880 April 2021 RESOLVED	GE 2 at 2; GE 3 at 8; GE 4 at 40; GE 5; GE 6; GE 7; AE H; AE O at 8-11; AE W; Tr. at 54-57
1.f	\$6,334	Student Loan	Deny	Deferred CARES Act	GE 2 at 2; GE 3 at 11; GE 4 at 43; GE 5; GE 6; AE A at 29-34; AE G; AE O at 27-42; AE S; AE Y; Tr. at 47-54
1.g	\$5,260	Credit Card	Admit	Paid \$8,337.98 April 2021 RESOLVED	GE 2 at 2; GE 3 at 10; GE 4 at 41; GE 5; GE 6; GE 7; GE 8 at 3; AE A at 13; AE I; AE J; AE O 4-8; AE V; Tr. at 58-61
1.h	\$281, Bal: \$4,968	Student Loan	Deny	Deferred CARES Act	GE 2 at 2; GE 4 at 43; GE 5; GE 6; AE A at 29-34; AE G; AE O at 27-42; AE S; AE Y; Tr. at 47-54

1.i	\$1,230	Credit Card	Deny	Settled for \$861.11 March 2021 RESOLVED	GE 1 at 35-36; GE 2 at 2; GE 3 at 12; GE 4 at 41; AE K; AE U; Tr. at 61-61
1.j	\$1,056	Credit Card	Deny	Settled for \$528.05 March 2021 RESOLVED	GE 2 at 2; GE 3 at 11; GE 5; GE 6; GE 8 at 4; AE L; AE U; Tr. at 61-63
1.k	\$838	Credit Card	Admit	\$0 Balance	GE 2 at 2; GE 3 at 10; GE 4 at 42; GE 6 at 2; GE 7; GE 8 at 7; AE A; Tr. at 63-66
1.l	\$78 3	Cell Phone	Admit	Settled for \$600 March 2021 RESOLVED	GE 2 at 3; GE 3 at 11; GE 4 at 43; GE 7 at 2; GE 8 at 2; AE A; AE M; AE O at 58-62; AE X; Tr. at 66-69
1.m	\$383	Gov't Overpayment	Deny	Paid July 2020 RESOLVED	GE 2 at 3; GE 3 at 9; GE 4 at 43; GE 5 at 6-7; AE A; AE T; Tr. at 34-35, 69-71
1.n	\$272	Credit Card	Deny	Disputed REMOVED from CBR	GE 2 at 3; GE 3 at 11; GE 4 at 42; AE A; AE O; Tr. at 71-74
1.o	Chapter 13 Bankruptcy, Filed 8/2016		Admit	Dismissed 4/2018	GE 1 at 32-33; GE 2 at 4; GE 3 at 3; GE 4; GE 5 at 5; GE 8 at 1; AE O at 69Tr. at Tr. 74-82, 91

In September 2018, Applicant was able to find a job in State A, which is approximately two thousand miles away from where he was living at the time. He borrowed money from his partner's parents to drive himself across the country. After repaying his partner's parents, he saved approximately \$10,000 in emergency funds; however, he was also supporting two households while working in State A, which limited his ability to repay his delinquent debts. (Tr. 91-97)

Although Applicant earned \$94,000 annually at his position in State A, he left after only a few months due to the high cost of living in the area. He then took a job in the Midwest, where the cost of living was significantly lower. His partner and their children moved to live with him, further reducing their expenses. He worked for this employer for two years, and earned approximately \$104,000 annually. (Tr. 91-97)

Applicant was interviewed by a Government investigator in January 2019, and confronted with his delinquent debts. He acknowledged that he wanted to pay and resolve his debts but did not have the capability at that time to pay them. In August 2020, Applicant started working for his current employer, a Defense contractor, and at the time of the hearing, he was earning \$200,000 annually. In 2020, after he started earning a higher salary, Applicant started making payments toward his delinquent debts using the "snowball method" to resolve his smallest debts first. He paid and resolved debts that were not alleged in the SOR. (GE 5; Tr. 32-34, 91-97)

Based upon the recommendation of his counsel, Applicant used his emergency savings to resolve several of the SOR allegations in March and April 2021, shortly before the hearing. Prior to this recommendation, Applicant had relied upon his understanding that the statute of limitations (SOL) for delinquent debts in his former state of residence was three years; therefore, many of the debts alleged in the SOR were no longer enforceable. At the time of the hearing, after paying his delinquent debts, he had approximately \$60,000 in combined savings, checking, and investment accounts. (GE 8; AE A; AE O; AE N; Tr. 85, 106-109)

Applicant timely filed his state and federal income tax returns shortly before the hearing and owed approximately \$200 and \$1,000, respectively, and had the resources and intent to pay both entities. He received credit counseling through his bankruptcy, did research online, listened to the advice of one of his non-commissioned officers (NCO), and read and followed Dave Ramsey's materials. He utilizes a written budget to track his bills and expenses. He has almost \$7,000 of disposable monthly income, \$5,000 of which he routinely saves. His most recent credit reports indicate no new delinquent debts, and all of his previous delinquent debts became delinquent during his divorce or during his period of unemployment and underemployment. (GE 4; GE 8; AE A; AE O; AE N; Tr. 85, 106-109)

Applicant provided copies of his NCO evaluation reports between 2010 and 2016. He was consistently described as knowledgeable, prepared, a team player, and a leader. His record included the following awards and decorations while serving in the ARNG: Army Achievement Medal (second award); Army Good Conduct Medal; and NCO of the Quarter. Applicant was also recommended for an Army Commendation Medal for work

that he performed in support of Operation Enduring Freedom while he was serving in Kuwait. He wants to continue to serve the United States. (AE P, AE Q; Tr. 116-117)

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts establishes the following disqualifying condition under AG ¶ 19: "(a) inability to satisfy debts"; and (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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.

The debts alleged in the SOR became delinquent after Applicant's 2013 divorce and during his period of unemployment from 2017 to 2018. His credit reports reflect no new additional delinquent debts, which is some indication his financial problems occurred during circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant went through a divorce after returning from an overseas deployment. As a result of the divorce, he was required to pay \$1,200 monthly in child support and assume responsibility for all of the marital debt. Shortly after his divorce, he entered into a new relationship with his current partner, and together they had additional children. All of Applicant's biological children and his stepdaughter have disabilities, requiring his partner to care for them full time. As a result of his financial strains, he filed for Chapter 13 Bankruptcy protection in 2016, and he made payments for over a year until his lack of income and the increased monthly payments became unaffordable because he was unemployed. Applicant chose to leave his position as a dual-status technician for the DOA and ARNG in 2017, due to multiple deployments and the negative affect on his family. He then struggled to regain fulltime employment for over a year.

The conditions and circumstances stated above were beyond Applicant's control, and once he regained employment, he worked to establish an emergency savings account to prevent future financial problems; however, he did little to resolve many of his delinquent consumer debts until shortly before the hearing. He testified that this was due to his reliance upon his former state's three-year SOL regarding enforceability of delinquent debts. Once he attorney recommended that he resolve his debts, he used his savings to resolve and pay most of the debts alleged in the SOR.

Applicant's paychecks are being garnished to pay his child support obligations. Although he still owes an outstanding balance for this debt, he is making payments as reflected in the record evidence. His federal student loans were consolidated in January 2020. He made two payments prior to the enactment of the CARES Act in March 2020. He has the means and the ability to repay this debt, and his actions in 2020 demonstrate a willingness to repay this debt. There is some evidence of credit counseling in the record. Applicant follows a written budget and has savings further reflecting responsible financial behavior.

Applicant could have done more earlier to resolve the debts alleged in the SOR; however, based on his track record of paying his debts, I believe he will continue to pay and resolve his child support and student loan obligations. There is sufficient assurance

that his financial problem is being resolved. Under all the circumstances, he established mitigation of financial considerations security concerns

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. I conclude Applicant has met his burden of proof and persuasion. He mitigated the financial considerations security concerns and established his eligibility for a security clearance.

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.o:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge