



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



In the matter of:)	
)	
)	ISCR Case No. 21-00958
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

05/02/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 18, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The SOR has two ¶ 1.k allegations. Rather than remarking the SOR, they will be referred to as SOR ¶¶ 1.k(1) and 1.k(2). Applicant responded to the SOR on July 1, 2021, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 6, 2022, and reassigned to me on January 14, 2022.

The hearing was convened as scheduled on February 17, 2022. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through K, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE L through P (the exhibits

consist of documents and email descriptions of the documents) and admitted without objection.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He served on active duty in the U.S. Navy from 1989 until he retired with an honorable discharge in 2011, during which he had nine years of sea service and almost four years of foreign service. He is attending college with a view toward a bachelor's degree. He married in 2008 and divorced in 2013. He has a 32-year-old child. He is living with his girlfriend. (Tr. at 18-22; Applicant's response to SOR; GE 1, 2; AE P-S)

Applicant had several periods of unemployment and underemployment from 2014, when his then employer lost a contract, until he obtained his current job in June 2019. He also had severe medical problems that left him hospitalized and unable to work for extended periods. He was treated for prostate cancer in 2017. He had blood-clot problems with his legs, resulting in six operations over a two-year period from about 2018 to 2020. Both legs were eventually amputated, one above the knee and one below. One of his legs became infected, and he had an extended hospital stay to treat it. He continues to have problems, with another surgery in October 2021. He has a 100% disability rating from the U.S. Department of Veterans Affairs (VA), and he receives \$3,448 per month in disability pay. The VA determined that the effective date of when he became totally and permanently disabled due to his service-connected disabilities was in June 2020 (Tr. at 16-17, 20-27; Applicant's response to SOR; GE 1, 2; AE R, S)

Applicant was not able to meet all of his financial obligations. Debts became delinquent; he lost his home to foreclosure; a car was repossessed; and he did not file all of his federal and state income tax returns when they were due. The SOR alleges the unfiled returns and 17 delinquent debts. However, the \$4,956 delinquent debts alleged in SOR ¶¶ 1.b and 1.k(1) are duplicate accounts. Except as specifically addressed below, the debts are established through credit reports and Applicant's admissions. (Applicant's response to SOR; GE 1-4; AE B)

Applicant did not file his federal and state income tax returns when they were due for tax years 2016 and 2018. He stated that he was having money issues, and he did not file the returns if he thought he would owe money. He filed his returns for 2017 on time. An IRS account transcript for tax year 2016, obtained on January 25, 2022, indicated that no return had been filed. He stated: "I did my 2016 taxes online and thought it was done, I did not know I had to mail my taxes in. That was the confusion." He submitted undated federal and state income tax returns for 2016, that indicated he owed the IRS \$399 and his state \$1,215. Those figures do not include additional interest and penalties. He did not submit any proof that he paid the taxes. (Tr. at 38; Applicant's response to SOR; GE 1, 2; AE C, E, L, M)

Applicant filed his federal and state income tax returns for 2017, 2019, and 2020 on time. An IRS account transcript for 2017, which was obtained in January 2022,

indicated that he owed \$3,647 for tax year 2017, which includes penalties and interest. In March 2020, the IRS withheld his \$342 refund for tax year 2019 and applied it to his 2017 tax debt. (Tr. at 39; AE D)

The IRS received Applicant's 2018 federal income tax return on March 7, 2020. A January 2022 IRS account transcript for tax year 2018 indicated that he owed \$1,671, which includes penalties and interest. (Applicant's response to SOR; GE 1, 2; AE E)

In January 2022, Applicant entered into a payment agreement with his state to pay \$8,163 in back taxes. He agreed to pay \$248 per month for 36 months, with the first payment due by February 15, 2022. He plans to set up a payment agreement with the IRS. (Tr. at 39-40; AE I)

SOR ¶ 1.a alleges \$7,677 owed on a charged-off account to a credit union. The creditor charged off \$9,677 in 2016, which is the balance reflected on an April 2020 credit report. Applicant instituted a \$200 per month payment plan in 2016. He made consistent payments, and the balance was reduced to \$7,677 in January 2021; \$5,877 in October 2021; and \$4,877 in March 2022. (Tr. at 17, 28-29; Applicant's response to SOR; GE 3, 4; AE B, G, T, U)

SOR ¶¶ 1.j and 1.k(2) allege \$5,538 and \$2,812 debts owed to the same financial institution. The April 2020 credit report lists the debts as reported by all three credit reporting agencies with dates of last activity of August 2014 and October 2014. The debts are not listed on the January 2021 Equifax credit report. Applicant asserted that the debts were paid, and provided a payment chart showing \$3,735 in payments between June 2017 and August 2017 on one account, and \$1,157 in payments in May 2018 on another account. These accounts are resolved. (Tr. at 35-36; Applicant's response to SOR; GE 3, 4; AE N, O)

Applicant paid \$1,963 in January 2021 to resolve the debt owed to an online university (SOR ¶ 1.p). He paid \$162 in January 2022 to pay in full a medical debt (SOR ¶ 1.n). (Tr. at 37-38; Applicant's response to SOR; GE 3, 4; AE F, J)

Applicant owed about \$292,000 on his mortgage loan when he lost his home to foreclosure in about 2017 (SOR ¶ 1.g). The creditor sold the property and received a claim from the U.S. Department of Veterans Affairs (VA), but there remained a deficiency balance of about \$72,000. The creditor wrote off the deficiency balance and held Applicant and the VA harmless for the deficiency balance. (Tr. at 19-20, 33; Applicant's response to SOR; GE 3, 4; AE A)

Applicant asserted that he paid the medical debts alleged in SOR ¶¶ 1.e (\$716) and 1.f (\$110), the charged-off \$533 debt alleged in SOR ¶ 1.h, and the \$152 debt alleged in SOR ¶ 1.o. The \$152 debt is reported by all three credit reporting agencies on the April 2020 combined credit report, with an activity date of November 2017. It is not listed on the January 2021 Equifax credit report. The other three debts are listed on that report, which was obtained about five months before the SOR was issued. The \$716 medical debt is listed on the January 2022 credit report. None of the debts appear

on the July 2021 TransUnion credit report submitted by Applicant. His assertions that these debts were paid are given greater weight because his other assertions that he paid debts were corroborated by documentation. (Tr. at 33-37; Applicant's response to SOR; GE 2-4; AE B, K)

The remaining debts are \$10,772 owed on a loan for a repossessed vehicle and about \$10,320 owed on five miscellaneous debts. (Tr. at 31, 34-36; Applicant's response to SOR; GE 3, 4; AE B)

Applicant paid several debts before the SOR was issued. He is eligible to receive Social Security disability payments, but he wants to continue to work and be productive. His finances are not perfect, but he credibly testified that he intends to continue to pay his debts and his taxes. (Tr. at 25, 31, 34-36, 43-47; Applicant's response to SOR; GE 3, 4; AE B)

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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including multiple delinquent debts, a foreclosed house, a repossessed car, and unfiled federal and state income tax returns. AG ¶¶ 19(a), 19(c), and 19(f) 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant retired after 22 years in the Navy, which included nine years of sea service and almost four years of foreign service. Things went well until about 2014 when he lost a job and then went through periods of unemployment and underemployment. Then his health failed him. He was treated for prostate cancer, and he had multiple surgeries on his legs, with the latest surgery in October 2021. Both legs were eventually amputated, one above the knee and one below.

Applicant started repaying his debts in 2016, with the balance of one debt reduced from \$9,677 in 2016 to \$4,877 in March 2022. He paid almost \$4,900 in 2017 and 2018 to resolve two more debts. He documented payments of \$1,963 and \$162 in 2021 and 2022 to pay two more debts. His assertions that he paid three debts totaling about \$1,300 are given greater weight because the debts are not reported on the most recent credit report and his other assertions that he paid debts were corroborated by documentation. He paid several debts that were not alleged in the SOR. All of his tax returns have been filed, but he still owes federal and state income taxes. His finances

are not perfect, but he credibly testified that he intends to continue to pay his debts and taxes.

Applicant's failure to file his tax returns and pay his taxes when required raises questions about his judgment and willingness to abide by rules and regulations. Nonetheless, I am satisfied that Applicant has learned a valuable lesson, and that all future returns will be filed on time and his back taxes paid.

Applicant has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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 22 years of honorable service, which included nine years of sea service and almost four years of foreign service, and that he has a 100% disability rating from the VA. I also note that the unfiled tax returns mostly corresponded with the years that Applicant was going through the surgeries that led to the amputation of his legs.

Overall, the record evidence leaves me without questions or doubts about 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.r: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge