



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



In the matter of:)
)
) ISCR Case No. 20-00408
)
Applicant for Security Clearance)

Appearances

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

07/25/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for a security clearance is granted.

Statement of the Case

On April 1, 2021, 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 elected in his response to the SOR (Answer, Item 2) to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on May 25, 2021. A complete copy of the file of relevant material (FORM) was

provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 9, 2021. He did not respond to the Government's FORM. The case was assigned to me on October 6, 2021. The Government's documents identified as Items 1 through 6 in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 47 years old. He married in 2000, divorced in 2004, remarried in 2006, and divorced in 2014. He has three children--one adult and two minors. In his June 2020 security clearance application (SCA), he listed that he lived with his parents since May 2015. (Items 1, 2, 3, 6)

Applicant graduated from high school in 1994. He earned an associate degree in 2007 and a bachelor's degree in 2012. He served honorably in the U.S. military on active duty from July 1997 to July 2005 and February 2011 to December 2011. He served honorably in the reserve from September 2005 to June 2006 and November 2008 to February 2016. He worked as a firefighter for DOD from January 2008 to May 2012. He was unemployed from June to August 2014. He worked overseas for previous DOD contractors from June 2006 to May 2008, May 2012 to June 2014, August to November 2014, and May 2015 to October 2019. As of his June 2020 SCA, he worked as a security officer for his employer, a DOD contractor, since April 2020. He also worked part time in a supermarket since October 2019. He has never held a security clearance. (Answer; Items 3, 6)

The SOR alleged that Applicant petitioned for Chapter 7 bankruptcy in December 2020, which was pending as of the date of the SOR (SOR ¶ 1.a). It also alleged that he had three delinquent consumer debts totaling \$70,939 (SOR ¶¶ 1.b - 1.d). In addition to his admissions in his Answer, Applicant disclosed SOR debts ¶¶ 1.b and 1.d on his SCA, and he discussed his delinquent debts during his September 2020 background interview. The August 2020 credit bureau report lists SOR debts ¶¶ 1.b, 1.c, and 1.d. The February 2021 credit bureau report lists Applicant's December 2020 bankruptcy (SOR ¶ 1.a). It also reflected that SOR ¶¶ 1.b and 1.c were included in Applicant's December 2020 bankruptcy, carried a zero balance, and were closed accounts. It also reflected that Applicant did not have any outstanding delinquent debts. SOR ¶ 1.d was not reported on the 2021 credit bureau report. (Items 1, 2, 3, 4, 5, 6)

Applicant attributed his delinquent debts to a lack of income from underemployment when he was not employed overseas. In 2014, he resigned from employment with a DOD contractor overseas when family issues affected his ability to work. In 2019, he also resigned from employment overseas with a DOD contractor when he was unexpectedly not cleared to work after taking medical leave for a hernia repair. His court-ordered child support obligation of \$2,000 monthly from approximately 2014 until September 2019, when it was reduced to \$1,000 monthly, also affected his

finances. He also acknowledged that he made bad financial decisions. (Answer; Items 2, 3, 6).

SOR ¶ 1.b is for a credit-card account past due in the approximate amount of \$3,921, with a total balance of \$24,343. Applicant stated in his SCA that he had obtained better employment and was trying to resolve this debt. He indicated in his background interview that he was communicating with the creditor in an attempt to make payment arrangements for this debt. This debt was resolved through Applicant's December 2020 bankruptcy. (Items 3, 4, 5, 6)

SOR debt ¶ 1.c is for a credit-card account past due in the approximate amount of \$2,804, with a total balance of \$23,182. Applicant indicated in his background interview that he was communicating with the creditor in an attempt to make payment arrangements. This debt was resolved through Applicant's December 2020 bankruptcy. (Items 3, 4, 5, 6)

SOR debt ¶ 1.d. is for a credit-card account placed for collection in the approximate amount of \$23,414. Applicant stated in his SCA that he had not yet made payments on this debt because he was unsuccessful in his attempts with the creditor to lower his payment. He indicated in his background interview that he was communicating with the creditor in an attempt to make payment arrangements. Although not reflected as such on his credit reports, this debt is resolved through Applicant's December 2020 bankruptcy. (Items 3, 4, 5, 6)

Applicant acknowledged in his background interview that his financial status needed improvement and "he feels like he's in over his head." He indicated that he was not able to make timely payments on his debts and he lacked the financial means to repay his debts, but that he was willing to resolve them. He was intent on securing better employment, saving money, and reaching payment arrangements with his creditors so that he could resolve his debts and avoid future financial problems. He had not yet had any financial counseling. (Items 2, 3, 6)

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 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, these guidelines are applied 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.

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 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 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. Section 7 of Exec. Or. 10865 provides that 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply. Applicant was unable to pay his debts.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

(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,

(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.

Conditions beyond Applicant’s control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant petitioned for Chapter 7 bankruptcy in December 2020. The 2021 credit bureau report reflects that two of Applicant’s three delinquent consumer debts, SOR ¶¶ 1.b and 1.c, were included in his December 2020 bankruptcy, carried a zero balance, and that the accounts were closed. The 2021 credit bureau report also reflected that Applicant did not have any outstanding delinquent debts.

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). I find that Applicant’s financial difficulties were the result of conditions that were largely beyond his control, and that he acted responsibly under the circumstances by resolving them through bankruptcy. They do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(c) are applicable.

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 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. Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has 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.d:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge