



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



In the matter of:)	
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)	ISCR Case No. 21-00245
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on May 11, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 22, 2021, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 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, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on November 26, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government’s file

of relevant material (FORM) on January 10, 2022, including documents identified as Items 1 through 5. Applicant received the FORM on January 31, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on February 27, 2022 (Response). The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 are admitted without objection. The case was assigned to me on April 27, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 41 years old and married. He served on active duty in the U.S. Air Force from December 2000 until his honorable discharge in December 2006. Thereafter, Applicant served in the Air Force Active Reserve from January 2007 until November 2011 when he was honorably discharged. Applicant is a college graduate and is currently sponsored by his employer, a defense contractor. (Item 3.)

The SOR alleged five delinquent accounts totaling \$59,416. (Item 1.) Applicant admitted those allegations and submitted documents showing that four of those accounts had been settled. More specifically, Applicant submitted four letters from the creditors of SOR ¶¶ 1b. through 1.e. stating that those debts had been settled. (Item 2.) In his Response to the FORM, Applicant submitted a letter from the creditor of SOR ¶ 1.a. stating that this debt had been settled. (Response.) Each settlement letter is on the creditor's letterhead and recites the account number. Those account numbers correspond to the account numbers (or the last four digits) on the SOR. Three of the settlement letters are dated November 11, 2021, one dated November 13, 2021, and one dated November 16, 2021. (Item 2 and Response.) Four of the five SOR accounts were disclosed on Applicant's May 2020 SCA. The SOR debts were in default as reported on the September 3, 2020 credit report. By the December 20, 2021 credit report, those debts showed no past due balances. (Items 4 and 5.) (The Government observes that the settlement letters do not recite the amounts or the dates the payments were received. It is difficult to imagine that the creditors did not receive the settlement funds before issuing otherwise authentic settlement letters.)

Applicant began working for a defense contractor in August 2008, when he was living in the United States. In September 2012, his employer transferred Applicant to a country in the Middle East (Country A). He was living in Country A when he completed his SCA in May 2020. The SOR was issued in April 2021. Because Applicant used a stateside address in the U.S. (his in-laws) for delivery of regular USPS mail, he did not receive the SOR via mail. Instead, after inquiry, Applicant was told by DOHA to expect an "EYES ONLY" package (the SOR) via email. (Response.)

On October 7, 2021, Applicant emailed DOHA that he still had not received the SOR. By that time, he had already been transferred (in 2020) to an Eastern European country (Country B). On October 8, 2021, Applicant received the SOR. After he received

a password, he signed the receipt and returned it to DOHA, which received it on October 14, 2014. After being given an extension to answer the SOR by December 12, 2021, Applicant answered on November 26, 2021. (Response.)

As noted, Applicant was transferred by his employer to Country A in September 2012. His wife followed in May 2013. At the time, Applicant owned two homes in the United States, one his primary residence, and one he rented out. He and his wife depended on having both of their incomes to pay household expenses. Applicant's wife was unable to find full-time employment until February 2014. Because of their jobs, Applicant rented a home in a desolate area that was midway between their jobs. The location of their home made it very affordable. (Response.)

Applicant and his wife were married in a civil union in April 2009. Now they planned a more formal wedding in the United States for April 2014. Since both were employed, they believed they could pay off the wedding expenses quickly. Not long after the wedding, however, Applicant's wife lost her job. She was unemployed until May 2016. During his wife's unemployment, Applicant depleted their savings and was forced to sell their homes in the United States. But Applicant never missed any mortgage payments on those homes. (Response.)

In 2013, Applicant was diagnosed with a severe medical condition that was very expensive to treat. The condition worsened in 2014, but his employer's medical insurance covered the costs. In 2016, however, Applicant's employer changed medical insurance. As a result, Applicant's medications cost him out-of-pocket expenses of \$2,000 per month. He tried new medications that cost \$500 per month, but those medications were ineffective. Applicant went off medications for several months but had adverse results. Therefore, he resumed the \$2,000 per month medications. As noted, Applicant's wife found full-time employment in May 2016. (Response.)

Country A's cost of living increased while Applicant lived there. In 2014 his yearly home rental was \$23,000. By 2018 it rose to \$26,000. The next year it went to \$32,000 per year. Just before the pandemic in 2020, the landlord wanted \$38,000 per year. Applicant did not want to terminate the lease because of substantial early termination penalties. He did, however, downsize in 2018 to a dwelling for \$17,000 per year. Applicant lived there until he was transferred to Country B in 2020. Also, in 2018, Country A increased taxes, and at the same time Applicant's employer reduced his pay by \$250 per month. (Response.)

In 2019, after down-sizing his housing expense, cutting nonessential expenses, and his wife being employed, Applicant contacted a company about debt consolidation and financial repair. The company recommended Applicant contact each creditor to discuss settlement amounts instead of payment plans. That became Applicant's long-term goal. (Response.)

Applicant found that his cost of living expenses in Country A were increasing and kept him from addressing his SOR debts sooner. This was complicated by unexpected

car maintenance expenses. Applicant took out a loan to address his SOR, but that was absorbed by moving expenses when he was transferred to Country B in 2020. (Response.)

With his Response, Applicant submitted three character reference letters. They are summarized below.

Letter A: February 13, 2022

The author served in the U.S. Air Force and as a civilian employee. He held a secret security clearance throughout his career. The author first met Applicant in July 2004. The author became Applicant's co-worker, mentor, supervisor, and friend, while they were on active duty together. When Applicant left active duty in 2006, they stayed in touch socially and professionally. In 2009, Applicant, then a civilian contractor, joined the author's team again. The author was Applicant's supervisor until 2012. Applicant, the author, and their families have remained friends over the years. Over those years, the author has always trusted Applicant with sensitive information. The author confidently recommends Applicant for a security clearance.

Letter B: February 16, 2022

The author met Applicant in February 2021, when the author arrived in Country B. The author is an Air Force Senior Master Sergeant and worked together with Applicant on Quality Assurance inspections and audits. The author wrote that Applicant is extremely helpful, knowledgeable, and excels at his job. Applicant has shared his financial situation with the author, and the author found no concerns about Applicant's judgment on national security information. The author believes that Applicant is trustworthy and has not given the author any reason to question Applicant's judgment.

Letter C: February 23, 2022

The author is a member of a defense contractor team Applicant joined in Country B 18 months ago. The author wrote that Applicant integrated well into the multi-national environment of the military program in Country B. He found Applicant to be an asset to his defense contractor and to the multi-national teams stationed there. The author believes Applicant is a solid individual and is worthy of being granted a security clearance.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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. . . .

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).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following condition is applicable in this case:

(a) inability to satisfy debts.

The SOR debts are established by Applicant's admissions and the Government's 2020 credit report. AG ¶ 19(a) applies.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. 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 . . .), 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

I have considered mitigating condition AG ¶ 20(a). The SOR debts were not incurred that long ago. When the SOR was issued in April 2021, they were in arrears on the September 2020 credit report. Nor were the debts infrequent. I cannot find that AG ¶ 20(a) applies.

The salient financial setbacks and Applicant's reactions to them are summarized below. They began after Applicant was transferred to Country A in September 2012.

** Applicant's wife followed him in May 2013. Applicant and his wife counted on her to get a job, as they needed two incomes to make ends meet. Applicant's wife did not find a job until February 2014.

** Applicant's wife lost her job in April 2014. She was unable to find another job until April 2016.

** During that period of unemployment, Applicant depleted his savings and sold his two houses in the United States.

** In 2013, Applicant developed a serious medical condition, the treatment for which was not fully covered by insurance, requiring him to pay \$2,000 a month.

** Between 2013 and 2018, Applicant's cost of living in taxes and rent increased dramatically. Applicant's salary was cut by \$250 a month.

** In 2018, Applicant downsized his rent and cut his living expenses.

** In 2019, Applicant sought guidance from a financial advisor, who recommended he negotiate settlements with creditors.

** Not long after that guidance, Applicant took out a personal loan intended for settlements with creditors. Those funds, however, were needed when Applicant was transferred in 2020 to Country B.

** In May 2020, Applicant completed his SCA and disclosed four of the SOR debts.

** In April 2021, the SOR was issued.

** In November 2021, Applicant settled his SOR debts.

The above summary identifies periods of unemployment, a costly medical condition, a cut in salary, and raises in rent and taxes. Those are all conditions "largely beyond [Applicant's] control," as contemplated by AG ¶ 20(b). Applicant reacted to those setbacks by using his savings, selling his two houses, downsizing his rent and living expenses, and seeking financial guidance. That was responsible conduct by Applicant. These all took place before Applicant completed his SCA and before the SOR was issued. I am not convinced that Applicant's resolution of his SOR debts was prompted by the security clearance process. I find that Applicant mitigated his SOR debts under AG ¶¶ 20(b), (c), and (d).

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. AG ¶¶ 2(a) and 2(d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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. – d.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge