



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



In the matter of:)
)
) ISCR Case No. 20-02273
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: Abu Kalokoh, Esq.

09/20/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On February 12, 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 responded to the SOR (Answer) on April 15, 2021, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on February 10, 2022, scheduling the hearing for March 2, 2022. On February 28, 2022, I canceled the hearing, to provide Applicant an opportunity to resolve his sponsorship status with his employer. DOHA issued a second

NOH on April 8, 2022, rescheduling the hearing for April 19, 2022. I convened the hearing as rescheduled.

At the hearing, Government Exhibits (GE) 1 through 10 and Applicant's Exhibits (AE) A through G were admitted without objection. Applicant testified. DOHA received the hearing transcript (Tr.) on April 27, 2022. (Tr. at 9-17; GE 1-5; AE A-G)

Findings of Fact

Applicant admitted all of the SOR allegations except SOR ¶ 1.c, which he denied. He is 42 years old. He was born in Sierra Leone and immigrated to the United States in 2008. He became a naturalized U.S. citizen in 2016. He married in Sierra Leone in 2007, and divorced in 2013. His child, a minor, was born in the United States. He obtained an associate's degree in Sierra Leone in 2004. In the United States, he obtained a bachelor's degree in cybersecurity and he was working towards his master's degree in cybersecurity and information assurance as of the date of the hearing. He has owned his home in the United States since 2013. (Answer; Tr. at 37-39, 64; GE 1; AE B, D)

From approximately 2010 to 2015, Applicant was a state government employee. He worked as a counselor for mentally challenged individuals. He was laid off in June 2015, when the state government elected to close the facility in which he worked. He was subsequently unemployed or underemployed as a driver for a ride sharing service, during which time he obtained his bachelor's degree. From 2019 to November 2021, he worked as a cybersecurity auditor for a DOD contractor. He was laid off because he did not have a security clearance. Since November 2021, he has been a self-employed community youth teacher. He taught members of the youth community computer skills, and he assisted them with obtaining cybersecurity certifications that enabled them to find corporate employment. The DOD contractor for whom he previously worked was sponsoring him for a security clearance. (Tr. at 6-7, 18-19, 35-36, 41-43, 50-55, 58, 60-62, 65; GE 1; AE A, D)

The SOR alleged that Applicant had eight delinquent consumer accounts, totaling \$236,555 (SOR ¶¶ 1.a - 1.h) and a \$36,541 delinquent child support obligation (SOR ¶ 1.i). The SOR allegations are established by Applicant's admissions in his Answer; his November 2018 security clearance application (SCA); the background interviews conducted in 2018 and 2019; by credit bureau reports from 2019, 2020, 2021, and 2022; and by documentation from the creditors for SOR debts ¶¶ 1.d, 1.e, 1.f, 1.g, and 1.i. SOR debts ¶¶ 1.c and 1.i are reported on the January 2019 credit bureau report. SOR debts ¶¶ 1.b, 1.c, and 1.e to 1.h are reported on the June 2019 credit bureau report. SOR debt ¶¶ 1.a to 1.f are reported on the 2020 credit bureau report. SOR debts ¶¶ 1.b and 1.c are reported on the 2021 credit bureau report. SOR debts ¶¶ 1.b and 1.c are reported on the 2022 credit bureau report. (Answer; GE 1-10; AE A, B)

Applicant attributed his delinquent debts to his period of unemployment or underemployment from 2015 to 2019, and his decrease in income after 2021. He earned approximately \$32,000 annually from around 2013 to 2015, and approximately \$73,000 annually from 2019 to 2021. He attributed his child support arrears to the child support

enforcement agency's decision in 2014, that in addition to paying \$1,202 monthly, he was obligated to pay an unrecalled lump sum amount that dated back to 2013. Although he made payments toward his child support obligation in 2014 through pay withholdings, his arrearage increased when he became unemployed and underemployed. During this time, he unsuccessfully attempted to modify his child support obligation. He resolved his delinquent debts and child support arrearage by gradually paying them one at a time, with money he saved when he worked for a DOD contractor from 2019 to 2021, with money he earned as a community youth teacher since 2021, and through interception of his tax refunds, as further discussed below. (Tr. at 29-37, 41-48, 58, 60-61, 64-73; GE 1, 10; AE B, D, E)

SOR ¶ 1.a is for Applicant's mortgage, past due in the approximate amount of \$1,766 with a total balance of \$180,349. Applicant brought his mortgage current in March 2021. His 2022 credit bureau report reflects that he remains current on his mortgage. (Answer; Tr. at 19-20, 29, 32; GE 3; AE A, B)

SOR ¶ 1.b is for an \$11,356 auto account in collection. SOR 1.c is for an account in collection for \$11,356. Applicant claimed that SOR ¶¶ 1.b and 1.c are duplicate accounts. They are reported on the credit bureau reports with different account numbers. The 2022 credit bureau report reflects that SOR ¶ 1.b was opened in January 2019 and carried a delinquent balance of \$11,356, while SOR ¶ 1.c was opened in August 2014 and carried a delinquent balance of \$6,356. Applicant entered into a payment plan of \$100 monthly in September 2017, while unemployed, for SOR ¶ 1.c. He made at least one payment of \$100, in accordance with that plan, in February 2018. He then made five payments of \$1,000 from July to September 2020, and a final payment of \$6,418 in February 2022 to resolve SOR ¶ 1.c. The 2021 and 2022 credit bureau reports reflect that Applicant was disputing SOR ¶ 1.b, and that a reinvestigation was in process. (Answer; Tr. at 21-23; GE 2, 3, 4, 5, 6; AE A, B, C)

SOR ¶ 1.d is for a \$9,975 charged-off credit union account. Applicant testified that he paid this debt. This debt was reported on the 2020 credit bureau report, which also noted that Applicant had entered into a payment agreement in an attempt to resolve this debt. This debt was no longer reported on the 2021 and 2022 credit bureau reports. (Answer; Tr. at 23; GE 3, 4, 5, 7; AE B)

SOR ¶ 1.e is for a \$5,929 charged-off credit union line of credit. In December 2017, Applicant had a payment arrangement of \$150 monthly to resolve this debt. He made a payment of \$150 in April 2018, and he settled this debt for \$3,114 in February 2021. (Answer; Tr. at 23-24; GE 2, 3, 4, 5, 8; AE B)

SOR ¶ 1.f is for \$1,396 in homeowner's association (HOA) fees, in collection. In September 2016, Applicant entered into a payment plan of \$103 monthly from September 2017 to February 2019 and then \$42 monthly thereafter, to resolve his outstanding HOA fees. He made a payment of \$400 in March 2018. Applicant was assessed fees totaling \$2,513 between January and June 2021; he made three payments totaling \$2,250 between January and May 2021; and his balance was \$266.74 as of June 2021. (Answer; Tr. at 24-25; GE 3, 4, 5, 9; AE B)

SOR ¶ 1.g is for a \$10,130 charged-off credit union account. In October 2017, Applicant entered into a payment plan of \$100 monthly for 112 months, for a total of \$11,118, to settle this debt. He made a final payment of \$2,500 in February 2021 to resolve this debt. (Answer; Tr. at 25-26; GE 7; AE B)

SOR ¶ 1.h is for a \$6,064 wireless service account in collection. As of February 2021, Applicant settled this debt through payments totaling \$2,425. (Answer; Tr. at 26; GE 4; AE B)

SOR ¶ 1.i is for Applicant's \$36,541 child support obligation in collection. From 2015 to 2019, approximately \$275 of Applicant's \$375 weekly unemployment benefits was automatically applied toward his arrearage. He made payments totaling approximately \$42,208 between May 2017 and April 2022, toward his child support obligation. He utilized savings that he set aside when he worked from 2019 to 2021, and he made gradual payments with the income he earned as a community youth teacher. In addition, his federal tax refunds totaling \$29,371, for tax years 2019, 2020, and 2022, were intercepted and applied to his arrearage. As of April 2022, the state child support enforcement agency informed Applicant that he had resolved his child support arrears, and instructed him to continue paying his monthly obligation of \$1,202. (Answer; Tr. at 26-28, 33-37, 45-48, 50-55; 62-65; GE 5, 10; AE B, F, G)

As of the date of the hearing, Applicant stated that he was financially stable and his finances were in good standing. He did not have any other delinquent debts. He made contributions to a 401(k) retirement account when he worked for the state government. He withdrew approximately \$4,700 in April 2022 from his 401(k) retirement account, so that he could have cash at his disposal when needed. He was current on his federal and state income tax return filings, and he intended to continue to timely file and pay his taxes. His monthly income varied, depending on the number of youth he taught, but he estimated that his monthly earnings were approximately \$5,000. He also had approximately \$5,000 to \$6,000 in his checking and savings accounts. He rented a room in a house. He developed a monthly budget. He had not received credit counseling. (Tr. at 37-40, 42-43, 48-60)

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 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(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 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 Exec. Or. 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* Exec. Or. 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 was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Conditions beyond Applicant's control contributed to his financial problems. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Applicant provided documentation reflecting that he resolved SOR debts ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g, 1.h., and 1.i; he was paying SOR debt ¶ 1.f; and he was disputing SOR debt ¶ 1.b. He intends to continue to pay his monthly child support obligation. He established good-faith efforts to repay his debts, his finances are under control, and his remaining financial issues are being addressed responsibly and no longer cast doubt on his judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

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. Overall, the record evidence leaves me without questions or doubts as to 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 - i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge