



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



In the matter of:)
)
) ISCR Case No. 21-00785
)
Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: Andrew P. Bakaj, Esq.

10/26/2022

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 May 28, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct) and 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 on June 24, 2021 (Answer), and he requested a hearing before an administrative judge. The case was assigned to me on February 8, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 25, 2022, scheduling the hearing for May 4, 2022. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 3 and Applicant's Exhibit (AE) A through P without objection. Applicant testified and called three witnesses, to include his spouse; two of the three witnesses testified telephonically. At Applicant's request, I kept the record open until May 18, 2022, for additional documentation. By that date, Applicant submitted documentation that I marked as AE Q and R and admitted without objection. DOHA received the hearing transcript (Tr.) on May 17, 2022.

SOR Amendment

I *sua sponte* amended the SOR, pursuant to ¶ E3.1.17 of the Directive, to correct an error in the SOR. The SOR erroneously misspelled Applicant's first name. I struck the letter "s" so that the SOR reflects the correct spelling of Applicant's first name. (Tr. at 184)

Findings of Fact

Applicant admitted both of the SOR allegations. He is 43 years old. He married in 2006, and divorced and remarried in 2008. He has two children, ages 14 and 6. His 6-year-old child is autistic. He graduated from high school in 1997, and he earned a bachelor's degree in 2006 and a master's degree in 2010. He and his family previously lived in state A, and they moved to state B in March 2013. As of the date of the hearing, he owned his home in state B since March 2019. (Answer; Tr. at 24, 49-52, 70, 161-163; GE 1; AE A, C, G, O, P, Q)

Applicant served honorably in the U.S. military from October 1997 to August 2003, and in the reserve from August 2004 until he medically retired in November 2009. He has worked for various DOD contractors. As of the date of the hearing, he worked as an associate - deputy task lead for his employer, a DOD contractor, since March 2013. He was granted a DOD security clearance in 2009. (Answer; Tr. at 5-6, 52-60, 152-161; GE 1; AE A, B, O, P, Q)

The SOR alleged that Applicant: (1) petitioned for Chapter 13 bankruptcy in September 2015; claimed approximately \$677,532 in outstanding liabilities; converted his bankruptcy case to a Chapter 7 and received a discharge in February 2016 (SOR ¶ 1.b); and (2) petitioned for Chapter 13 bankruptcy in October 2019; claimed approximately \$726,304 in outstanding liabilities; and his bankruptcy case was pending as of the date of the SOR (SOR ¶ 1.a). The SOR allegations are established by Applicant's admissions in his Answer and January 2020 security clearance application (SCA), and by bankruptcy court records. (Answer; GE 1-3; AE I, J, K, M, O)

Applicant and his spouse attributed their financial problems to beginning in March 2013, when they relocated their family from state A to state B for continued employment opportunities for Applicant, his spouse's employment transfer, and to be near Applicant's in-laws. Upon arriving in state A, Applicant and his family lived with Applicant's in-laws until Applicant sold his home in state A. He and his spouse contracted to purchase their first home in state B in July 2013. In August 2013, they finalized the sale of their home in state A. They finalized the purchase of their first home in state B in September 2013. (Tr. at 23-24, 59-79, 99-106, 111-115, 117-120, 130-135, 161-170; AE C)

In April 2013, Applicant's spouse learned that her employment as a career counselor to U.S. military members would be transitioning from in-person to virtual services. She testified that this transition "was a very big blindside . . ." She consequently had to find new employment, as the U.S. military's contract with her company ended because of the transition. She found employment as a career counselor with a private, for-profit educational institution in July 2013. (Tr. at 23-24, 59-79, 99-106, 111-115, 117-120, 130-135, 161-170; AE C)

Applicant's spouse's new employment, however, was short-lived. Her position turned out to be different from that for which she interviewed, and it did not align with her values. Her employer tasked her with cold-calling graduates to assemble data necessary for securing federal funding, but instructed that she report only those who had achieved professional success. She stated that when she left her position, "[t]hat's essentially where my whole life just completely fell apart . . ." She realized that her skills as a U.S. military career counselor did not transition to civilian life, as she did not have a degree in counseling or teaching. She "quickly realized I needed to go back to school if I was going to be successful in any type of career, not just a job." (Tr. at 62-67, 99-106)

While earning her state B teaching certificate, Applicant's spouse was in a high-risk pregnancy with their second child, due to a medical diagnosis that posed health risks for both her and the child. She underwent an emergency C-section in 2015 out of immediate concern for her and the child's health, and the child was born with significant health challenges. The child was formally diagnosed with autism in June 2021. The costs of this child's medical care, coupled with Applicant's spouse's unemployment, caused financial strain. (Tr. at 23-24, 67-72, 74-75, 99-106, 135-136, 142-143, 163-170; AE G, P)

In the summer of 2015, Applicant and his spouse unsuccessfully explored with their banking institution the possibility of resolving their debts through a home-equity line of credit or a debt-consolidation loan. Applicant's spouse, who handled the household finances, had the idea for them to reorganize, with the intent to repay their debts. They met with a bankruptcy attorney and petitioned for Chapter 13 bankruptcy in September 2015. Up until then, they were current on their expenses. They made one payment under the Chapter 13 bankruptcy plan, and then they converted their bankruptcy case to a Chapter 7 in November 2015. Their attorney advised them that doing so was their best option, as they would not have been able to afford further payments under the Chapter 13 bankruptcy plan. (Tr. at 76-79, 106-111, 121-122, 124-125, 136-142, 163-171, 177-181; GE 3; AE E, I)

Their Chapter 7 bankruptcy case was discharged in February 2016. They continued to pay their mortgage, but they surrendered both of their cars. The credit cards they used for their second child's medical expenses were among the discharged debts. Applicant's spouse knew that her federal student loans were not dischargeable. Both Applicant and his spouse acknowledged that their Chapter 7 bankruptcy case permitted them to reset financially. They testified, however, that it significantly affected their credit and lives, and they would never petition for Chapter 7 bankruptcy again in the future. (Tr. at 76-79, 106-111, 121-122, 124-125, 136-142, 163-171, 177-181; GE 3; AE E, I)

In March 2018, Applicant and his spouse sold their first home in state B at a profit of approximately \$15,000. They applied their equity towards purchasing their second home in state B, in July 2018, for \$460,000. Applicant's spouse testified that they "were in a good spurt," and while their second home was costlier, they obtained a better interest rate. They also sought to decrease their long-term living expenses by downsizing to a home that was smaller, easier to maintain, and in a good community. The home was also in a good public school district for both of their children, which offered access to public therapy services for their second child. Applicant's spouse attended night school to continue pursuing her teaching certificate, and she tutored for \$20 hourly. (Tr. at 79-92, 99-101, 111-115, 117-120, 135-136, 142-143, 171-177; AE F, G, H, P)

As they lived in this home, Applicant and his spouse encountered significant problems that were not revealed during home inspection. His spouse described it as "the house of horrors." Immediately, they learned that their heating, ventilation, and air conditioning system was broken. In 2018 to early 2019, when their second child at age 3 began to self-harm, was hospitalized for five days, and monitored for Kawasaki disease, he tested positive for exposure to black mold. They then found black mold and termites in the home. They learned that the home inspector botched their inspection, in conspiracy with the realtor. They elected to remain in the home when the owner of the home inspection company convinced them to let him fix the problems in the home, in exchange for them not suing his company. Meanwhile, their second child's behavioral issues worsened. Applicant's spouse stated that they chose to sell the home with full disclosure, because it "came to a very apparent halt that we needed to go to an even less expensive house." They sold this home in March 2019 at "almost a complete wash." (Tr. at 79-92, 99-101, 111-115, 117-120, 135-136, 142-143, 171-177; AE F, G, H, P)

Applicant and his spouse purchased their third home in state B in March 2019 for \$419,000, and they lived in this home as of the date of the hearing. They downgraded when they purchased this home. Applicant's spouse testified regarding her intentions, "I wanted to just be as basic life living, just completely readjust, and that's what we've done." In October 2019, Applicant and his spouse petitioned for Chapter 13 bankruptcy. She stated, "between the [second] house that was supposed to help us recover and financially save, it had ruined what felt like a wou[n]d that was already open." They claimed liabilities totaling approximately \$726,304, which included their mortgage and both of their cars. She stated:

[I]t was a lot of preemptive anxiety over when I would be back with a paycheck. We were very used to living with two paychecks, and not even for extravagant things. My husband and I have never even taken a vacation together. We don't have nannies or dog walkers. I mean, just for electricity, food, gas, water. And so, we were already really skimming as much as we could to just live. And we were waiting just to breathe with my paycheck to make sure that everything was paid on time. And it was becoming more clear as we were living here, we were living [in state B], the same place we are now, how just living was not going to be possible, that we were going to begin to default on things. We were going to have to choose food or the mortgage very quickly with young children.

(Tr. at 72-73, 90-99, 119-120, 171-177; GE 2; AE E, J, K, M, N)

Applicant and his spouse were repaying their debts through their five-year Chapter 13 bankruptcy payment plan, at \$1,025 monthly. They provided documentation reflecting that they had not missed a single payment from December 2019 to April 2022. They had no future intentions of filing for bankruptcy again, or converting their Chapter 13 bankruptcy case to another Chapter 7. Applicant's April 25, 2022 credit bureau report reflects that he did not have any outstanding debts. Applicant's spouse stated, "We stick to our budget. I feel like we have had a rebirth." Their budget reflects a monthly net remainder of \$700 after expenses, which included continued payment of their mortgage despite its inclusion in their Chapter 13 bankruptcy case. She stated that they did not have any credit cards. They switched their health insurance plan in 2019, which allowed them to budget in advance for their medical expenses. She stated that they previously paid, under Tricare Standard, approximately \$300 to \$800 monthly out-of-pocket solely for the medical expenses of their second child. Since switching to Tricare Prime, they paid \$300 monthly in medical costs for the whole family. She stated that their second child was doing well. (Tr. at 90-99, 119-120, 170-177, 180-184; GE 2; AE E, G, J, K, L, M, N, Q)

Applicant continued to be the sole breadwinner. However, his spouse anticipated returning to work in 2023 as a teacher. She stated that although their Chapter 13 bankruptcy case prevented them from having a savings account, they were setting aside money in a 401(k) retirement account and in future investments. They were current on filing their federal and state income tax returns, and were on a payment plan of \$200 monthly to resolve their federal income taxes of \$3,769 that they owed for tax year (TY) 2021. Her federal student loans of approximately \$100,000 were in deferment due to the COVID-19 pandemic. Once the deferment period is over, she anticipated that her payments toward her student loans would be approximately \$300 to \$400 monthly, and she expected to apply for student loan forgiveness once she begins teaching. Both Applicant and his spouse received financial counseling through their bankruptcy cases and from a nonprofit credit counseling organization in August 2021. (Tr. at 90-99, 115-117, 119-130, 135-150, 163-164, 170-177, 180-184; GE 2, 3; AE D, E, J, K, L)

Both character witnesses that testified attested to Applicant's trustworthiness, integrity, and good judgment. The first witness (W1) was Applicant's supervisor and friend. W1 has known Applicant since Applicant began working for the company in 2013. W1 stated that he has input into Applicant's performance, and described Applicant as "my virtual subject matter expert," "top notch," has a strong work ethic, and is a respected member of the community. W1 was aware of the SOR concerns, and stated that he guided Applicant in the self-reporting requirements when Applicant informed him of Applicant's financial challenges and consequent exploration of bankruptcy options. W1 stated that he was aware that Applicant's family endured significant challenges related Applicant's second child; he believed that Applicant relied on bankruptcy to maintain control of his finances; and Applicant learned from both bankruptcy experiences and would not face bankruptcy again in the future. (Tr. at 14-30)

The second character witness (W2) was Applicant's colleague and friend since 2015. W2 was also a member of the National Guard for 19 years, with three deployments

overseas. W2 described Applicant as “highly organized,” and “usually the one that keeps everybody in the office on par.” W2 was aware of the SOR concerns, and stated that he was aware that Applicant incurred financial difficulties due to the medical issues of Applicant’ spouse and second child. (Tr. at 30-47)

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. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Although Applicant received a Chapter 7 bankruptcy discharge in 2016 and then petitioned for Chapter 13 bankruptcy in 2019, each of these bankruptcy cases occurred under unique circumstances that are unlikely to recur, as previously discussed. He and his spouse received credit counseling not only through their bankruptcy cases, but also from a nonprofit credit counseling organization in August 2021. They have a track record of abiding by their current Chapter 13 bankruptcy plan, scheduled to conclude in 2024. They downsized their living expenses, switched health insurance plans, and are adamant about abiding by their budget. They have a plan and a net remainder that will enable them to tackle their outstanding federal taxes for TY 2021 and Applicant's spouse's student loans once they are out of deferment. I find that ¶¶ 20(a), 20(b), 20(c), and 20(d) are established. I find that Applicant's finances are under control, and they do not continue to cast doubt on his judgment, trustworthiness, and reliability.

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 – 1.b:	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