



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



In the matter of:)
)
) ISCR Case No. 21-00883
)
Applicant for Security Clearance)

Appearances

For Government: Daniel P. O’Reilley, Esq., Department Counsel
For Applicant: *Pro se*

10/04/2022

Decision

COACHER, Robert E., Administrative Judge:

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

History of the Case

On May 28, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on June 23, 2021, and he requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 16, 2022, and the hearing was convened as scheduled on June 21, 2022, using video teleconferencing capabilities. Applicant was originally notified of the hearing date of June 21, 2022, by an email that I sent to him on June 4, 2022 (See hearing

exhibit (HE) III). The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection, except for GE 5, which objection was overruled. The Government's exhibit list and its discovery letter sent to Applicant were marked as HE I and II. Applicant testified, and offered exhibits (AE) A through R. The record was kept open to allow Applicant to submit additional evidence, which he did in the form of AE S through U. All were admitted without objections. DOHA received the hearing transcript (Tr.) on July 6, 2022.

Procedural Issue

The Government moved to amend SOR ¶ 1.a to name the Federal Government rather than the named state as the proper taxing authority for this allegation. Applicant had no objection and the motion was granted. (Tr. 10-12)

Findings of Fact

Applicant admitted some of the allegations and denied others. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer as a heavy equipment operator since October 2003. He worked on the commercial side of the operation until 2020, when he was asked by the company to complete a security clearance application (SCA) so that he could receive a clearance and work on the government-contract side of the company. His job location is at various locations in the world out at sea. He works 30 days on shift and then 30 days off shift. He is not paid when he is off shift. (Tr. 6, 38-39, 48, 50; GE 1)

Applicant served honorably in the U.S. Marine Corps from 1995 to 1999 and included a tour as an U.S. Embassy guard. He has been married 22 years and has three adult children. His wife does not work outside the home. He is a high school graduate. (Tr. 33, 43-44, 47; GE 1-2)

The SOR alleged that Applicant had a tax debt and 26 past due, collection, and charged-off debts totaling approximately \$47,588. (SOR ¶¶ 1.a-1.aa) The debts are established by Applicant's admissions, court document, and entries on two credit reports. (Tr. 40; GE 1-5; Answer to SOR)

Applicant explained that his delinquent debts were exacerbated by several events that put him into financial difficulties. In 2018, he experienced a medical situation involving blood clots that resulted in hospitalization and four months off from work with no pay. Also, in 2017 or 2018 his father passed away, and Applicant was burdened with paying his funeral expenses. In 2019, he lost his brother in an accident and also became responsible for his final expenses. He had to use high interest loans to pay for the funeral expenses. Additionally, his workday shifts were cut back. Applicant explained that most of his debts accrued prior to 2020 before he was seeking a clearance. Once he submitted his SCA and realized his financial history was significant, he began making efforts to

address his delinquent debts. This task proved more difficult because of his “at sea” job where access to the internet was limited to nonexistent and cell phone use was prohibited. He has paid several debts, established payment plans on others, and hired a debt relief company (DRC) to help address some debts. (Tr. 33-34, 39, 41, 50-51, 54, 56-58, 66-67)

The status of Applicant’s delinquent debts is as follows:

SOR ¶ 1.a-\$3,000. The SOR originally alleged this as a state tax debt, however, the amendment and evidence established that this was a federal tax debt. Applicant presented documentation showing he had no state tax debt. Once Applicant was advised that this was a federal tax debt, he contacted the IRS about how to pay this debt. This debt is being resolved. He has filed all of his tax returns. (Tr. 59-60; AE A, S)

SOR ¶ 1.b-\$1,350. Applicant entered into a payment agreement with the creditor in June 2022 and documented both the agreement and his first payment of \$100 on June 20, 2022. This debt is being resolved. (AE B; Answer to SOR)

SOR ¶ 1.c-\$23,890. This debt arises out of an automobile purchase Applicant made in approximately 2016-2017. After the purchase, Applicant had serious mechanical problems with the car. He voluntarily turned it into the dealership and heard nothing further about it until his security clearance case brought it up. Documentation shows that this debt is included in his DRC agreement. This debt is being resolved. (GE 2, p. 6); AE C (See Exhibit A).

SOR ¶ 1.d-\$6,803. Applicant incurred this debt when he was out of work for four months due to medical reasons and his landlord began eviction proceedings on the residence Applicant and his family were renting. He documented that this debt is included in his payment plan with the DRC. This debt is being resolved. (Tr. 41; AE C (See Exhibit A); Answer to SOR)

SOR ¶¶ 1.e-\$1,700; 1.f-\$2,418; 1.g-\$758; 1.h-\$677; 1.i-\$669; 1.l-\$553; 1.m-\$517. These consumer debts went delinquent when Applicant was out of work for four months because of medical reasons and when he had his work hours cut as described above. He has enrolled all six debts into his DRC payment plan and documented payments on two debts included in the plan. These debts are being resolved. (Tr. 39-41; AE C (See Exhibit A), U)

SOR ¶¶ 1.j-\$656; 1.k-\$598. Applicant took out these consumer loans to help pay for his father’s and brother’s funeral expenses. His other siblings were not able to contribute. They went delinquent when his work hours were reduced and he experienced medical problems. He settled both debts in June 2022. These debts are resolved. (AE N, O, P, T)

SOR ¶¶ 1.n-\$482; 1.o-\$425; 1.s-\$252; 1.t-\$102; 1.u-\$89; 1.v-\$75; 1.x-\$60; 1.y-\$60; 1.z-\$56. These medical debts became delinquent after Applicant’s medical problems and his subsequent four-month layoff. He has consolidated these debts and documented making payments on this account. These debts are being resolved. (AE G-J)

SOR ¶ 1.p-\$401. Applicant set up a payment plan for this consumer debt and made one payment under the plan in June 2022. This debt is being resolved. (AE E)

SOR ¶ 1.q-\$356. Applicant set up a payment plan for this consumer debt and made one payment under the plan in June 2022. This debt is being resolved. (AE F)

SOR ¶ 1.r-\$278. Applicant paid this debt in June 2022. This debt is resolved. (AE D)

SOR ¶ 1.w-\$75. Applicant disputed this debt and verified with the collection company handling the debt that it was not among the medical debts owed by Applicant. This debt has little, if any, security significance. This debt is resolved. (Tr. 73; AE H, p. 3)

SOR ¶ 1.aa-\$623. Applicant set up a payment plan for this consumer debt and made one payment under the plan in June 2022. This debt is being resolved. (AE K)

Applicant credibly testified that he is in good financial shape right now. His monthly gross income is approximately \$8,500, and he is in a good position to continue to make his \$377 bi-weekly payments to his DRC plan and his other monthly debt payments. He has not incurred any new debt and he is paying all his current bills on time. All of his federal and state tax returns have been filed on time. He intends to continue making his debt payments so that he can continue to work on the company's government contracts. (Tr. 48, 58, 60, 69-70, 65, 80; AE C)

Applicant provided a character letter from a coworker who has recently worked with him. The coworker states that Applicant is the hardest working, most dedicated crew member. He highly regards Applicant's professionalism. Applicant also presented his June 2022 job performance appraisal where he was rated at the highest level (#5-commendable) in all categories. (AE Q-R)

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 national security eligibility 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 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 for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 had multiple delinquent debts that were unpaid or unresolved. Both of the above disqualifying conditions are raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 had periods where he came under financial distress that led to some of his delinquent debts. He was the only relative in a position to pay for his father's and brother's funerals in the span of a few years. He had to use high-interest loans to pay for them. He also experienced a medical situation that caused him to be off work, without pay, for four months that put him behind on several debts. In addition, he had his work days reduced, which impacted his overall finances. These were circumstances beyond

his control. Applicant eventually acted responsibly by entering into a debt payment plan with a DRC and other creditors, settling and paying other debts, and contacting one creditor who disavowed the debt. He made arrangements with the IRS to pay his delinquent tax debt. While his financial state is not perfect, perfection is not required. Additionally, his explanation for not addressing the debts in a timelier manner is very plausible given his company's recent decision to have him work on classified contracts and the logistical difficulties he has in contacting creditors when he is on the job for a month at a time while at sea. He has established a track record of steady payments, which have paid or are currently paying his delinquent debts. There are clear indications that his debts are being resolved and that he is making good-faith efforts to do so. Applicant credibly disputed a debt involving one of the medical bills. All the above mitigating conditions substantially 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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. I considered Applicant's military service, his years of civilian service, his 2022 job appraisal and the strong recommendation of his coworker. While Applicant could have been timelier in resolving of his debts, he eventually paid some and established workable plans for the remainder.

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

Robert E. Coacher
Administrative Judge