



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



In the matter of:)	
)	
)	ISCR Case No. 21-02407
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2022

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On November 19, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The 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 (Answer) the SOR on November 30, 2021, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 3, 2022, and the hearing was convened as scheduled on May 17, 2022, using video teleconference capabilities. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection.

The Government's exhibit list and discovery document were identified as hearing exhibits (HE) I and II, respectively. Applicant testified and offered exhibits (AE) A-C, which were admitted without objection. The record remained open until June 17, 2022, to allow Applicant to submit documentary evidence. He submitted AE D-F, which were admitted without objection. I reopened the record on August 25, 2022, until September 30, 2022, and Applicant timely submitted AE G-I, which were admitted without objections. DOHA received the hearing transcript (Tr.) on May 26, 2022.

Findings of Fact

Applicant admitted all but two SOR allegations, with explanations, and 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 46-year-old employee of a defense contractor. He began working at his present job in 2020. He is an aircraft mechanic inspector. He is a high school graduate and received technical training. He married in 2003 and divorced in 2005. He married his current wife in 2012. He has three children from his first marriage and three stepchildren from his current marriage. He has a child support obligation for his youngest child that ends in November 2022, upon her 18th birthday. (Tr. 6, 20; GE 1)

The SOR alleged 18 delinquent debts, including a child support obligation, two federal income tax debts for years 2014 and 2016, five medical debts, and ten consumer debts totaling approximately \$35,537. The debts are established by Applicant's admission in his March 2021 security clearance application (SCA), his admissions in his Answer and at hearing, and his credit reports. (Tr. 20-22; GE 1-3; Answer)

Applicant testified that his financial troubles began when his wife was laid off from her job. She was earning approximately \$30,000 annually and assisting with the family finances. The Covid pandemic impacted her ability to get a job, leaving Applicant the sole wage earner for the family. His wife then decided to go back to school to earn a nursing degree. While completing her degree, she started working part time, in early 2021, for an employer who is assisting with her school tuition payments. She began full-time employment in August 2021. (Tr. 20-22, 26, 29-30)

Applicant contacted his creditors in an attempt to work out payment plans, but that effort was met with no success because the payments they demanded were too high for his income. In 2021, he contracted with a debt relief company (DRC) to have them negotiate settlements on his delinquent accounts. From January to October 2021, he documented making 14 payments of approximately \$225 each to the DRC. Applicant was unsatisfied with the lack of progress by the DRC so he terminated his contract with it. In about October 2021, he contacted a bankruptcy attorney and was advised to pursue a Chapter 13 bankruptcy, which he did. (Tr. 21-22, 28, 33-35; AE D)

Applicant filed his initial Chapter 13 petition in October 2021. He participated in financial counseling as part of the bankruptcy. All his SOR-listed creditors were notified

about the bankruptcy in order to file claims. An initial payment plan was developed in February 2022. He documented that beginning in April 2022, he was making approximately \$1,500 per month payments to the bankruptcy trustee. The payments were directly from his work paychecks. An amended plan was prepared and accepted in September 2022. Under the accepted plan, Applicant's monthly plan payments will be approximately \$3,300 monthly. This higher amount is because the final plan includes payments for his mortgage and two cars. Previously, he was making these payments on his own, outside of the plan. Applicant calculates that his total monthly income will be used to make the bankruptcy plan payments. Their remaining monthly expenses will come out of his wife's income, which is approximately \$2,500 monthly. Additionally, his child support payments of approximately \$386, which are currently coming out of his monthly paychecks, end in November 2022. These payments included his monthly obligations and arrearages. (Tr. 17, 36, 37-38; AE A-C, F-J)

Applicant explained that he did not have the funds to pay his 2014 and 2016 federal income taxes at the time they were due. He documented that he paid his 2014 federal taxes in 2015 and now has a zero balance. His 2016 federal taxes were paid in 2017 and there is a zero balance. (Tr. 38; GE 1; AE E)

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 delinquent debts consisting of consumer accounts, medical accounts, child support obligations and federal taxes for 2014 and 2016. I find the above disqualifying conditions are raised.

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; 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 incurred debts that he was unable to resolve because of his wife's unemployment and the impact of the pandemic, which were conditions beyond his control. He acted responsibly by first trying to work with his creditors to resolve his debts, then by hiring a DRC and paying them \$225 in 14 payments. The DRC did not produce results, so Applicant turned to using Chapter 13 bankruptcy as a way to pay his creditors. He received financial counseling. He has made \$1,500 monthly payments to the bankruptcy trustee since April 2022 and before the final plan was approved. The bankruptcy judge signed an order for Applicant to pay the trustee \$3,300 monthly on September 26, 2022. He documented that he has been paying his child support payments, which will end in November 2022. He also documented that he satisfied his delinquent federal taxes owed long before the SOR was issued. Applicant's actions in dealing with his financial problems establish his reliability, trustworthiness, and good judgment. Moreover, through his payments to the trustee, he has established a track record of financial responsibility. All the above mitigating conditions 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. I also considered Applicant's federal contractor service, his wife's unemployment, the circumstances surrounding his indebtedness, and his efforts to resolve his debts.

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.r:	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