



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



In the matter of:)
)
) ISCR Case No. 21-01781
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On August 10, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 (AG) effective on June 8, 2017.

On August 12, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 15, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2022, scheduling the hearing for October 27, 2022. The hearing was held as scheduled. The

Government offered exhibits (GE) 1 through 5. Applicant objected to GE 5, the unauthenticated summary of personal subject interview. The objection was sustained. GE 1 through 4 were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A through C. There were no objections, and they were admitted into evidence. The record remained opened until November 10, 2022, to permit Applicant to provide additional evidence. He timely provided a document that was marked as AE D and admitted without objection. DOHA received the hearing transcript on November 9, 2022.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.e. He denied the SOR allegations in ¶¶ 1.c and 1.d. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He served in the military from 1994 to 1998 and was honorably discharged. He reenlisted in 2000 and was honorably discharged in the paygrade E-5 in January 2010. He experienced periods of unemployment from January 2010 to June 2011 and December 2011 to July 2013. He was attending school during this period. Applicant earned an associate's degree in 2015. He was also unemployed from January 2014 to February 2014 and from August 2017 to June 2018. He began working for his present employer, a federal contractor, in November 2018 until the present. His initial annual income was approximately \$50,000 that has incrementally increased to approximately \$70,000. (Transcript (Tr.) 17, 21-23, 25-26, 44-46; GE 1)

Applicant married in 2001 and divorced in 2006. He has a 20-year-old child from the marriage. He has four other children from relationships, whose ages are 22, 18, 17 and 13. He does not have court orders for child support, but provides monthly payments of \$300 for the 17-year-old and 13-year-old children. He also helps pay some college expenses for the 18-year-old. The other two children are adults and he does not provide financial support. (Tr. 18-22; GE 1)

The debts alleged in the SOR are corroborated by Applicant's admissions, testimony, and credit reports from April 2020, June 2021, and September 2022. (GE 1, 2, 3, 4)

Applicant attributed his financial issues to his unemployment. Since he began his current job, he has had more financial stability. He testified that there were debts on his credit report that he was unaware of and did not believe belonged to him. In 2018, he contacted a debt relief company to address the negative information on his credit report and dispute it. The only debts he was aware he owed were his student loans. He did not make payments on them from 2015, when he completed his degree, until 2019. Applicant admitted that he made a mistake when he failed to begin timely repaying his student loans. He testified that in 2019, he contacted the creditor for his student loans and provided a copy of his W-2 wage statement. At that time, he had not yet been working at his present job for a full year, so the previous year's W-2 showed he earned about

\$18,000. He arranged to pay \$20 a month for six months to move the student loans out of their default status. He provided a document that shows that from August 2019 until May 2020 he made 10 monthly payments. These consistent payments brought his student loans out of default status. He then contacted the creditor and was mailed a form to provide information to make a payment arrangement based on his current income at the time. He anticipated his monthly payments would be about \$300. However, before the payment plan started, the loans were placed in a deferred status due to the COVID-19 pandemic and moratorium on student loan payments. Applicant testified that when the moratorium is lifted he would begin making monthly payments likely in January 2023. He has also requested an application for the loan forgiveness program. (Tr. 24-37, 41, 48-54; AE B, C, D)

The SOR alleges two medical debts (§ 1.c - \$591 and § 1.d - \$216). Applicant credibly testified that he has medical insurance and is also covered by the Department of Veteran's Affairs (VA) for his medical services. He receives about \$2,100 monthly in disability payments that began in 2018. He disputes that he is responsible for these medical debts. He said one is a hospital bill and he never went to the hospital. His children have medical insurance under their mothers' insurance plans. Both debts are reported as collection accounts on his June 2021 credit report. The last activity date on the debt in SOR § 1.c is November 2015 and for § 1.d the last activity date is September 2016. The debt in SOR § 1.c is not reported on Applicant's most current credit report from September 2022. Applicant testified that he spoke with the debt relief company that was disputing the debts on his credit report about someone using his identity for medical services. He stated that he uses the VA for all of his medical needs and did not incur medical expenses outside of the VA. (Tr. 39-41, 55-58)

The debt in SOR § 1.e (\$191) is a bill owed to a college that Applicant attended when he went back to school in 2019. He believed his college expenses were all covered by his GI Bill. He was unaware he owed the bill and when he learned of it, he paid it. He provided documentary proof that he resolved the debt. (Tr. 37-39; AE B)

Applicant's current finances are stable. He has about \$2,000 in savings and money in his pension plan. Each month after paying his expenses, he has about \$2,800 remaining. He is confident that when the student loan payment plan begins, he will be able to make the required monthly payments. He has no other debts. He admitted he made a mistake by not addressing his student loans when they became due, but he is back on track. (Tr. 43, 47, 59-60)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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. 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. Directive ¶ E3.1.15 states 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.

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

The security concern relating to the guideline 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. 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent student loans and other debts that he failed to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline 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, 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; and

(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.

Applicant acknowledged that he did not timely address his student loans after he completed college. He had periods of unemployment that affected his ability to make payments. This was a condition beyond his control. In August 2019, before receiving the SOR, he began addressing his student loans and participated in a rehabilitation program. He completed the program and was to begin an income-based payment program when his student loans were placed in a deferred status due to the COVID-19 pandemic moratorium. Although delayed, Applicant acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant was unaware he owed the debt in SOR ¶ 1.e because he thought it was covered by the GI Bill. He has paid it. He is now in a stable job, saving money, and is poised to begin repaying his student loans when the moratorium is over. Applicant's financial problem are unlikely to recur and do not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(d) apply. There is no evidence Applicant has participated in financial counseling, but there are clear indications that his problems are resolved and under control. AG ¶ 20(c) partially applies.

Applicant disputed the medical debts alleged in SOR ¶¶ 1.c and 1.d. He credibly testified that he received all of his medical treatment through the VA and these debts do not belong to him. SOR ¶ 1.c is no longer on his most recent credit report. He has not provided other documentary evidence to support that these debts do not belong to him. I believe due to the small amount of the debts that if they did belong to him, he would pay them. I also find that these debts do not rise to the level of creating a security concern. AG ¶ 20(e) partially applies.

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 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.

Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant successfully mitigated 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-1.e:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge