



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



In the matter of:)
)
) ISCR Case No. 21-00253
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: Troy Nussbaum, Esq.
11/17/2022

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 21, 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 requested a hearing before an administrative judge in his initial response to the SOR on June 29, 2021 (Answer). He submitted a supplemental Answer (Supp Answer) on July 8, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference (VTC) hearing on March 18, 2022, scheduling the matter for a virtual hearing on April 21, 2022. At Applicant's request and with no objection from Department Counsel, I cancelled that hearing on April 11, 2022, to provide Applicant additional time to prepare and to retain representation. DOHA issued another notice of VTC hearing on June 14, 2022, rescheduling the matter for a virtual hearing on July 28, 2022. I convened the hearing as rescheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5 in evidence, without objection. Applicant objected to GE 6 on the basis that it was not relevant to the SOR allegations. I overruled Applicant's objection and admitted GE 6 in evidence. Applicant testified at the hearing and submitted documents that I admitted in evidence as Applicant's Exhibits (AE) A through I, without objection. At Applicant's request, I kept the record open until August 19, 2022, to afford him the opportunity to provide additional documents. He timely submitted documents that I collectively admitted as AE J in evidence. DOHA received the hearing transcript (Tr.) on August 10, 2022. (Tr. at 10, 13-19, 105-106)

Findings of Fact

Applicant admitted all of the SOR allegations. He is 41 years old, married, and has two minor children. He earned an associate degree in 2009 and a bachelor's degree in 2012. As of his November 2016 security clearance application (SCA), he owned his home since August 2014. (Supp Answer; Tr. at 20-22, 62-63, 67-71; GE 1)

Applicant served honorably in the U.S. military from 2002 until he medically retired in 2007. He has since worked for various DOD contractors, with the exception of when he worked for a U.S. Government Agency from August 2014 to July 2015. He was unemployed from September 2010 to March 2011, July 2011 to October 2011, and July 2015 to November 2015. As of the date of the hearing, he was a software test engineer for his employer since March 2019. He was initially granted a security clearance in 2003. (Tr. at 6-7, 20-23, 54-63, 98-100, 102; GE 1)

The SOR alleged that Applicant had five delinquent consumer debts totaling approximately \$30,160 (SOR ¶¶ 1.a - 1.e). It also alleged that he had two judgments, entered against him by his homeowners association (HOA) in 2016 and 2019, for \$5,425 and \$4,503, respectively (SOR ¶¶ 1.f - 1.g). The SOR allegations are established by Applicant's admissions in his Answer, his SCA, credit bureau reports from 2018 and 2020, and court records. SOR ¶¶ 1.a, 1.b, 1.d, and 1.e are reported on the 2018 credit bureau report. SOR ¶¶ 1.a through 1.d are reported on the 2020 credit bureau report. (Supp Answer; GE 1-6)

Applicant attributed his delinquent debts to a period beginning in approximately March 2014. His then-employer, a DOD contractor for whom he had been working since July 2013, placed him in a non-billable status and he was uncompensated for approximately 15 to 45 days. His four-month period of unemployment in 2015 further exacerbated his situation. (Tr. at 32-35, 60-62, 100, 102-103; GE 1)

Applicant believed that the SOR debts had been resolved by their removal from his credit report due to the statute of limitations. After receiving the SOR, he realized that his belief was erroneous. He was unable to reach the SOR creditors when he attempted to do so after he received the SOR, to which he attributed the expiration of the statute of limitations. In May 2022, he began working with a nonprofit credit counseling organization. He learned from the credit counseling organization that he could still resolve his outstanding debts, even though they were no longer reported on his credit bureau reports.

He contracted with the credit counseling organization, at \$989 monthly for 36 months, to locate his creditors and resolve his outstanding debts. He made three monthly payments to the credit counseling organization, from June 2022 to August 2022, and he intended to continue making the monthly payments in accordance with his contract. As of the date of the hearing, he paid SOR ¶¶ 1.c, 1.d, 1.e, 1.f, and 1.g, and he was working with the credit counseling organization to resolve SOR ¶¶ 1.a and 1.b. (Tr. at 24-30, 35-38, 41-42, 45, 47-48, 51, 65-72, 83-87, 95-98, 103; AE A, B, J)

SOR ¶¶ 1.a and 1.b are two charged-off auto accounts, for \$13,092 and \$12,002, respectively. Applicant financed the car in SOR ¶ 1.a for approximately \$16,000, and the car in SOR ¶ 1.b for approximately \$14,000, in around 2012. After he could no longer afford to pay his monthly car payments, he reached out only to the creditor in SOR ¶ 1.b and unsuccessfully attempted to negotiate a reduced payment. Both of the cars were repossessed in around 2014. He could not recall whether either creditor notified him of an outstanding balance after repossession, or whether he made any payments to either creditor between 2014 and May 2022, when the credit counseling organization made its first payments to SOR ¶¶ 1.a and 1.b on his behalf. Prior to working with the credit counseling organization, he believed that he did not have any further obligation once the creditors for both SOR ¶¶ 1.a and 1.b repossessed the cars. As previously stated, he intends to continue working with the credit counseling organization to resolve both of these debts. (Supp Answer; Tr. at 31-38, 72-84; AE A, B)

SOR ¶ 1.c is for a \$1,145 television and internet services account in collection. Applicant returned the equipment when he switched providers in approximately 2019 or 2020, but the company did not have a record of him doing so. He disputed the debt with the company, and he was unaware that the company billed him for it until he reviewed a copy of his credit bureau report in 2021. He paid this debt in April 2021. (Supp Answer; Tr. at 37-41, 82-84; AE C, I)

SOR ¶ 1.d is for a \$419 charged-off credit card. Applicant believed he previously resolved this debt. He learned it was outstanding when he received the SOR. He attempted to make payments toward this debt between approximately 2021 and 2022, and he paid it in June 2022. (Supp Answer; Tr. at 41-44, 84-87; AE D, E)

SOR ¶ 1.e is for a \$3,502 charged-off credit card. Applicant contacted the creditor in 2022 and learned that the creditor issued an IRS Form 1099-C in December 2017, which cancelled this debt. He provided documentation to corroborate his claim. (Supp Answer; Tr. at 44-48, 87-88, 92-93; AE F)

SOR ¶¶ 1.f and 1.g are for two judgments entered against Applicant by his HOA, in October 2016 for \$5,425 and in July 2019 for \$3,852. When Applicant refinanced his mortgage, he mistakenly believed that money was automatically set aside from his mortgage payments and applied to his HOA dues. He later learned that he had to pay his HOA dues separately by check. His HOA dues accrued as he attempted to work with the mortgage company to resolve his outstanding HOA dues, culminating in both judgments. He negotiated a consolidation of both judgments, and made a payment of \$914 in April 2021 and a payment of \$1,829 for June and July 2021. He took out a loan of

approximately \$12,000 loan to settle his remaining outstanding HOA dues through September 2021, and was repaying this loan through the credit counseling organization. The judgments in SOR ¶¶ 1.f and 1.g were released in October 2021. Since then, his HOA moved to an online system and he has timely paid his HOA dues of \$110 monthly through automatic deductions from his bank account. He was current on his HOA dues as of the date of the hearing. (Supp Answer; Tr. at 48-52, 88-90, 99-100; GE 4, 5; AE A, G, I, J)

Since March 2019 and through the date of the hearing, Applicant earned \$125,000 annually. His monthly net income was \$5,200 and his spouse's was \$3,000. Since his medical retirement, he also received \$1,100 monthly for his 50% disability rating from the U.S. Department of Veterans Affairs. He received credit counseling in May 2022 from the credit counseling organization, through which he also developed a budget. He was current on his financial obligations, which included his mortgage; car payment for a car he financed in August 2020; a \$14,000 home improvement loan; and the \$12,000 loan that he obtained to resolve his outstanding HOA dues. His student loans of approximately \$40,000 were in forbearance until approximately August 2022. He had savings allotted in his budget with the credit counseling organization to pay his student loans monthly once out of forbearance. (Tr. at 20-27, 30-31, 51-55, 62-65, 74, 88-95, 98-100, 103-104; GE 6; AE A, H, I, J)

Applicant continued to monitor his credit. He learned to stay diligent and proactive in resolving his financial issues before they become exacerbated. He timely filed his federal and state income tax returns. A \$595 state tax lien entered against him in August 2017 was released in December 2018. Although he could not recall why the lien was entered against him, he paid it as soon as he learned about it. His May 2022 credit bureau report reflects that he does not have any other delinquent debts. Character letters from three individuals, including two lifelong friends of whom one previously served with Applicant in the U.S. military, all attested to his reliability, trustworthiness, and dedication. (Tr. at 20-27, 30-31, 51-55, 62-65, 74, 88-95, 98-100, 103-104; GE 6; AE A, H, I, J)

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. AG ¶ 19(a), an “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are applicable. Applicant has a history of not being able to pay his debts.

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. He provided documentation reflecting that he resolved SOR ¶¶ 1.c through 1.g. Before he received the SOR, the creditor cancelled SOR ¶ 1.e in December 2017; he paid SOR ¶ 1.c in April 2021; and he negotiated a consolidation of the judgments in SOR ¶¶ 1.f and 1.g and then made a payment of \$914 towards that consolidation in April 2021. He established good-faith efforts to repay his debts by his efforts both before and after he began working with the credit counseling organization in May 2022. He intended to abide by his payment plan with the credit counseling organization so that he could continue to resolve SOR ¶¶ 1.a and 1.b. His finances are under control and they 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 – 1.g:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge