



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 21-02798

Appearances

For Government:

Tara Karoian, Esquire, Department Counsel

For Applicant:

Pro se

December 8, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on June 23, 2021. (Government Exhibit 1.) On December 15, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing with explanations and attachments (Answer) on December 29, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 24, 2022. The case was assigned to me on June 1, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 7, 2022. The case was heard on June 29, 2022. DOHA received the transcript of the hearing on July 8, 2022.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibit A, which was also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits B and C, which were also admitted without objection, and the record closed on July 21, 2022.

Findings of Fact

Applicant is 45 years old and married for the second time with seven children. At the time of the hearing four children were minors and lived with him and his second wife. He has two master's degrees. Applicant is employed by a defense contractor as a Software Engineer and is trying to retain a security clearance in relation to his employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 25; Tr. 44-46, 49-52.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant had seven past-due debts, including one automobile repossession, totaling \$25,610 (SOR 1.a through 1.g). Applicant admitted the allegations in the SOR with the exception of SOR 1.b and SOR 1.f, which he denied. The existence and amounts of these debts is supported by credit reports dated July 20, 2021; and May 24, 2022. (Government Exhibits 3 and 2.)

Applicant stated that the delinquent debts he admits all arose before the 2018 time-frame, except for 1.a. He went through several years of underemployment and unemployment that lasted from 2011 through 2016. His pay fluctuated during this period. At one point Applicant and his family lived in public housing. He also had serious and expensive family issues between 2016 and 2018. (Government Exhibit 1 at Sections 13A, 26; Government Exhibit 2; Tr. 17-20, 42, 46-47, 52-57.)

In 2016, he accepted a job with the Federal government that required a trans-continental move. While the pay was substantially higher than what he was previously earning, it was not sufficient for him to pay his regular debts and resolve his past-due indebtedness. In August 2019, he obtained his current employment, which carried

another substantial raise in pay. With the increase in salary, he has been working to resolve the debts in the SOR, as described below. (Government Exhibit 2; Tr. 16-17, 20-21.)

The current status of the allegations in the SOR is as follows:

1.a. Applicant admitted having a charged-off automobile loan in the amount of \$8,649. Applicant reached a payment arrangement with this creditor in April 2021 in order to keep the car. He made continuous and timely monthly payments and paid this debt off in June 2022, as shown by documentation from the creditor. Now that this debt is resolved, Applicant has additional funds to pay toward his other debts. (Government Exhibit 4 at 7; Applicant Exhibit A; Applicant Exhibit B at 4-6; Tr. 22-24, 31, 60-61.)

1.b. Applicant has consistently denied any knowledge of this past-due debt in the amount of \$2,919. He stated that a dispute was filed with the credit-reporting agencies. This debt does not appear in the most recent credit report in the record. (Government Exhibit 2.) Based on the available evidence, I find that there is insufficient evidence to show that Applicant actually owes this debt. In addition, I also find this debt is subject to a legitimate dispute. (Government Exhibit 4 at 6-7; Tr. 24-27, 57-59.)

1.c. Applicant admitted owing a creditor \$1,621 for a charged-off debt. This debt also arose in the 2016 time-frame. He admitted that it remains due and owing. For various reasons, including the fact that the original creditor is now out of business and the current creditor will not accept payments, he has been unable to resolve this debt. He is willing and able to make payments. I find this debt is unresolved through no fault of Applicant. (Government Exhibit 4 at 6; Tr. 28-29.)

1.d. Applicant admitted owing a charged-off debt in the amount of \$877. This debt arose in relation to a washer and dryer Applicant purchased after moving across the country with his family. He wound up returning both appliances due to quality issues. He has filed a dispute with the credit-reporting agencies, as shown by the most-recent credit report in the record. I find that this debt is subject to a legitimate dispute. (Government Exhibit 4 at 5-6; Tr. 29-32, 58.)

1.e. Applicant admitted that he is indebted to a credit union for a charged-off debt in the amount of \$108. This credit union is only found in one state, on the opposite side of the country from where Applicant now resides. Applicant has recently corresponded with this credit union to clarify payment arrangements for the debt. This debt is not yet resolved. (Answer; Applicant Exhibit B at 3, 12-13; Tr. 32-35, 59.)

1.f. Applicant has consistently denied any knowledge of this past-due debt in the amount of \$2,694. He stated that a dispute was filed with the credit-reporting agencies. This debt does not appear in the most recent credit report in the record. Based on the available evidence, I find this debt is subject to a legitimate dispute. (Government Exhibit 4 at 8; Tr. 25-36, 61.)

1.g. Applicant admitted owing \$8,747 for a vehicle that was repossessed during the period he was unemployed or underemployed. This debt was subject to a dispute that was resolved, as reported by the automobile finance company in 2021. (Government Exhibit 3 at 4; Government Exhibit 4 at 7; Tr. 36.) This debt does not appear on the most recent credit report in the record. (Government Exhibit 2; Tr. 36-39, 64-65.) I find that this debt was the subject of a legitimate dispute.

Applicant stated that his current financial situation is stable, though tight. He is able to pay his current debts. The credit reports in the record confirm that fact. Now that he has paid off the debt in SOR allegation 1.a in full, he has additional funds to use toward other indebtedness. Applicant also pointed to the fact that the period of delinquency was several years in the past, and he has had no past-due debts since that time. This is important since Applicant has been working to support his large family on one income. (Government Exhibits 3, 4, 5, and 6; Applicant Exhibit A; Tr. 39-44.)

Applicant indicated that current structural issues with his home might also be affecting his finances. He submitted photographic evidence to support his statements. (Applicant Exhibit C.)

Mitigation

Applicant submitted several letters of recommendation from four current or past co-workers and friends. They all describe him as an able, intelligent, honest and forthright person. The writers confirm the existence of the family issues Applicant discussed in his documentary evidence and testimony. They describe him as a “reliable and dependable person” with outstanding character. All of the writers, who also hold security clearances, recommend Applicant for a position of trust without reservation. (Applicant Exhibit B at 7-11.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant owed approximately \$25,615 for six past-due debts and one automobile repossession as of the date the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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.

All four of the mitigating conditions are applicable to Applicant's case. His current financial situation is stable. He is paying everyday debts. All but one of the debts in the SOR arose before 2018. Most of them arose during the 2011 to 2016 time frame, when Applicant was unemployed or underemployed. Applicant has behaved responsibly in resolving his debts. When the debt in SOR 1.a became delinquent due to serious household issues, he made successful efforts to resolve the debt to the creditor's satisfaction. He filed disputes with the credit reporting services with regard to the debts in SOR 1.b, 1.d, 1.f, and 1.g. SOR 1.c and 1.e are not yet resolved. However, the amounts

are small and Applicant has expressed a credible desire to resolve them now that his financial picture is improving. He has many daily expenses due to his family size and the fact he provides the sole financial support. Under the particular facts of this case, I find that he behaved responsibly under the circumstances.

In support of these findings, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Given his resources, Applicant has initiated a pragmatic approach to the repayment of his debts and has taken significant steps to resolve the debts. Applicant has the knowledge and ability that will allow him to resolve his other debts and stay on a proper financial footing. He has fully mitigated all the financial concern allegations in the SOR. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation by working to resolve his debts in a responsible manner, which does not evince poor judgment or unreliability. He has minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 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 national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge