



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



In the matter of:)
)
) ISCR Case No. 21-01010
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

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 13, 2021, the Department of Defense (DOD) issued 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 November 11, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November

1, 2022, scheduling the hearing for November 29, 2022. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A through K. There were no objections to any documents and all were admitted into evidence. The record remained open until December 6, 2022, to permit Applicant an opportunity to provide additional evidence. He timely provided documents that were marked as AE L through AE O and admitted without objection. DOHA received the hearing transcript on December 7, 2022.

Findings of Fact

Applicant admitted the allegations in the SOR. 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 62 years old. He earned a bachelor's degree in 2009 and a master's degree in 2014. He served in the military from 1979 to 1999 and retired in the paygrade E-6. He served in combat operations in Operation Desert Storm and Grenada. He married for the third time in 2015. He has no children. He has worked for federal contractors since approximately 2008 and held a security clearance during this time. (Transcript (Tr.) 19-23, 51-52; AE L)

In approximately 2016, Applicant agreed to financially help his lifelong friend (LF) of more than 50 years, who was starting a lawn service business. Applicant was not a business partner. Because of their friendship, he was confident that LF was trustworthy and reliable and would repay him. Applicant used cash advances from credit cards and loans to help his friend purchase equipment for the business and for operating expenses. LF was making payments to Applicant until approximately 2017 or 2018 when he stopped. They did not have a written agreement regarding repayment of the loans or credit card expenditures. Applicant knew he was responsible for paying the amounts owed on the credit cards and loans. He has been unable to locate LF since about 2018. None of his family know where he is located. (Tr. 23-27)

Applicant was making regular timely payments on the credit cards and loans alleged in the SOR. None of his financial obligations were delinquent. His payment history is supported by entries on his credit report that show he was current in his payments until 2019. He decided because he had a lot of debt he wanted to use the expertise of a credit resolution service. In May 2019, he contracted for the services of CLG who promised him to help resolve all of his debts. He would make monthly payments to CLG, who would then negotiate and settle his debts. CLG advised Applicant to stop making payments on all of his debts, even though they were not in a default status. Applicant followed their directions, believing CLG was operating in good faith and would use his payments to settle his debts. Applicant made monthly payments of \$843 from May 2019 to approximately September 2021. He paid approximately \$24,447 to CLG. He credibly testified that during that time, CLG settled one debt for approximately \$1,000. (Tr. 27-32; GE 3; AE A)

Applicant admitted he should have been more diligent in researching the validity and performance of CLG. When he did, he realized it had horrendous ratings and comments about its service and consumer reputation. He provided copies of complaints made on the website to the Better Business Bureau. They all corroborate that CLG is unscrupulous. Applicant terminated his agreement with them in October 2021 and was reimbursed approximately \$6,745. (Tr. 27-30; AE G, I)

After Applicant terminated the agreement with CLG, he contacted the creditors who owned the debts alleged in the SOR to discuss making payments or negotiating settlement agreements. Applicant settled the debt to the creditor in SOR ¶ 1.a. He provided supporting documentation. (Tr. 30-31, 33; AE J, K)

Applicant was notified by the creditor in SOR ¶ 1.b that it was seeking a judgment against him for the debt. He hired an attorney to attempt to settle the debt before the judgment was entered, but was untimely. His attorney has sent a letter to the creditor attempting to make payment arrangements to settle the debt, but the creditor has been unresponsive. He is actively attempting to resolve the debt. (Tr. 34-39; AE B, C, H)

Applicant has repeatedly contacted the creditor in SOR ¶ 1.c to make payment arrangements to settle the debt. His calls are directed to an automated response that advises him that his debt has been sold to a collection company, and he will receive a letter in the next two to three weeks regarding the debt. He credibly testified that he has contacted the creditor at least ten times and gets the same message and can never talk to a person. Applicant is attempting to resolve the debt. (Tr. 40-41)

Applicant negotiated a settlement with the creditor in SOR ¶ 1.d. He will make six monthly payments. He provided proof that he has made the first payment. This debt was for a loan he secured for LF. (Tr. 41-46; AE N, O)

Applicant contacted the creditor in SOR ¶ 1.e about five months ago to discuss settling the debt. The creditor only had an answer machine, and he was unable to talk to anyone. He plans to continue to make payments and resolve his other debts, so he can be in a better position to make a settlement offer with this creditor in the future. He will continue to attempt to resolve the debt. (Tr. 46-47)

Applicant paid the debt in SOR ¶ 1.f. His stepdaughter had his permission to write a check on his account. The check was returned because the bank believed she was an unauthorized user. When he contacted the bank, he was told it would process the check again, but it did not. Applicant paid the debt when he learned it had not been processed. He provided supporting documents. The debt is resolved. (Tr. 55-57; AE D, E)

Applicant maintains a detailed budget and provided a copy. He lives within his means and has no other outstanding debts. He pays the balance on his credit cards each month. He made regular payments on his student loans until they were deferred due to the pandemic. Applicant takes full responsibility for resolving all of his debts. Although

these debts were incurred to help a friend, he understands that he must pay them. He credibly testified that he believed CLG was going to help him resolve his debts, but instead put him in a worse financial position. (Tr. 48-56; AE M)

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 incurred debts when he decided to help his friend. The friend failed to make the payments required on the debts. After Applicant contracted with CLG to assist him in resolving his debts, they advised him to stop paying all of his debt, causing them to become delinquent. Despite paying CLG more than \$24,000, it resolved only one debt. Applicant has delinquent debts that he was unable 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant tried to help a friend who reneged on his financial obligations to him. Applicant contracted with a debt relief company that despite receiving more than \$24,000 placed him in a worse financial position. The company did not cause the debts to become delinquent. They advised him to let them become delinquent, but he was the cause. Applicant has been digging himself out of a difficult financial situation. He takes responsibility for his actions and is systematically resolving his delinquent accounts. Applicant's financial difficulties happened under unique circumstances, are unlikely to recur, and do not cast doubt on his reliability, trustworthiness or good judgment. AG ¶ 20(a) applies.

Applicant financial problems were caused by his friend's failure to follow through with his promise to repay him. Applicant may have been altruistic and naïve when he chose to take loans to help his friend, but he was trying to do a good thing. The fact his friend failed him was beyond his control. He has acted responsibly in addressing his delinquent debts. AG ¶ 20(b) applies.

There is no evidence Applicant has participated in financial counseling, but there are clear indications that his financial problems are being resolved and under control. AG ¶ 20(c) partially applies. He has initiated good-faith efforts to pay his creditors and resolve his debts. AG ¶ 20(d) 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.f:	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