



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



In the matter of:)
)
) ISCR Case No. 19-03605
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

February 16, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On March 8, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 7, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 4, 2021, Applicant submitted his Answer to the SOR. On July 30, 2021, Department Counsel was ready to proceed.

On August 5, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge; and on September 27, 2021, DOHA reassigned the case to me. On August 24, 2021, DOHA issued a notice of hearing scheduling the hearing for September 29, 2021. The hearing was convened as

scheduled. Government Exhibits (GE) 1 through 6 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. I held the record open until November 30, 2021, to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE C through J, which were admitted without objection. On October 7, 2021, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c – 1.f, and 1.j, with explanations; and denied SOR ¶¶ 1.b, and 1.g – 1.i, with explanations. Applicant's admissions are incorporated or adopted herein as findings of fact. Additional findings of fact follow.

Background Information

Applicant is a 45-year-old subject matter expert level 4 employed by a defense contractor since February 2018. He seeks to retain his secret security clearance, which is a requirement of his continued employment. (GE 1; Tr. 11-13)

Applicant graduated from high school in May 1994. He was awarded an associate of arts degree in general studies in February 2009. (GE 1; Tr. 13-15) Applicant was married from 2005 to 2018, and that marriage ended by divorce. He does not have any children. (GE 1; Tr. 15-16)

Applicant served in the U.S. Marine Corps from January 1996 to January 2000, and was honorably discharged as a sergeant (pay grade E-5). He reentered the Marine Corps in May 2001 and served continuously until he retired as a staff sergeant (pay grade E-6) in August 2017. His military occupational specialty at the time of his retirement was 0848 (field artillery operations chief). (GE 1; AE E; Tr. 16-17) Applicant has been awarded a Veterans Affairs (VA) 100% total and permanent disability rating in part for combat-related injuries. (Tr. 17-18; AE J)

Financial Considerations

Applicant's responsibility for the 10 delinquent SOR debts, totaling approximately \$73,828, is established by his SOR Answer; his May 2018, September 2019, and July 2021 credit reports; his February 21, 2019 Office of Personnel Management Personal Subject Interview (OPM PSI); and his hearing testimony. (SOR Answer; Tr. 19-43; GE 2 – 5)

Applicant's financial problems originated when he was married to his former spouse. He described his marriage as contentious, especially around the time he and his wife separated in 2016. (Tr. 20, 38) Applicant's last assignment in the Marine Corps required him to move from the East Coast to the West Coast, however, his wife initially chose not to accompany him. She was not employed and they fell into debt trying to maintain two households. (Tr. 19-21, 23) Applicant contacted a bankruptcy attorney in 2016 before he retired from the Marine Corps, but could not afford the filing fee. (Tr. 22)

After Applicant retired from the Marine Corps, he contacted another bankruptcy attorney and was advised that he was ineligible to file for bankruptcy because he earned too much income. That same attorney gave him two options, pay off his charged off debts, which would not improve his credit or wait seven years until his debts fell off his credit report. (Tr. 22-24)

I advised Applicant that ignoring his legally incurred debts by letting them fall off his credit report was not an acceptable means of debt resolution in the security clearance venue. (Tr. 24-25) Post-hearing, Applicant provided documentation that he had paid or resolved five of his ten SOR debts, and that he enrolled the remaining five debts in a debt consolidation program (DCP), on October 6, 2021, discussed below. (AE C)

The following is a summary of Applicant's SOR debts and their status:

SOR ¶ 1.a - \$21,671 charged-off consolidation loan. This debt is enrolled in Applicant's DCP, and is being repaid. **DEBT BEING RESOLVED.** (Tr. 25; AE C, AE D(1))

SOR ¶ 1.b – \$8,079 collection account to a law firm for divorce-related legal fees. Applicant provided a letter from the law firm dated October 12, 2021, indicating that he paid the law firm \$9,165 and had a zero balance. **DEBT RESOLVED.** (Tr. 26-29; AE D(2))

SOR ¶ 1.c - \$7,783 charged-off credit card. This debt is enrolled in Applicant's DCP, and is being repaid. **DEBT BEING RESOLVED.** (Tr. 29; AE C, AE D(1)).

SOR ¶ 1.d - \$7,776 charged-off credit card. This debt is enrolled in Applicant's DCP, and is being repaid. **DEBT BEING RESOLVED.** (Tr. 30, AE C, AE D(1)).

SOR ¶ 1.e - \$6,378 charged-off credit card. This debt is enrolled in Applicant's DCP, and is being repaid. **DEBT BEING RESOLVED.** (Tr. 30-31, AE C, AE D(1)).

SOR ¶ 1.f - \$2,140 charged-off credit card. Applicant provided a letter from the creditor dated October 29, 2021, indicating that they were no longer pursuing this debt and would be issuing him a Form 1099-C. **DEBT RESOLVED.** (Tr. 31; AE D(3)).

SOR ¶ 1.g - \$959 collection account for a cable bill. Applicant provided a bank statement reflecting that he paid this creditor \$970 by direct debit on February 24, 2021. **DEBT RESOLVED.** (Tr. 31-33; AE D(4)).

SOR ¶ 1.h - \$80 past-due medical co-pay. Applicant provided a bank statement reflecting that he paid this creditor \$80 by direct debit on May 20, 2019. **DEBT RESOLVED.** (Tr. 33-34; AE D(5)).

SOR ¶ 1.i - \$382 past-due dental bill for his former spouse. Applicant provided a letter dated November 29, 2021, from the collection agency handling this account

indicating that he paid \$382. The letter noted this account was paid in full. **DEBT RESOLVED.** (Tr. 34-36; AE D(6)).

SOR ¶ 1.j - \$18,580 charged-off credit card. This debt is enrolled in Applicant's DCP, and is being repaid. **DEBT BEING RESOLVED.** (Tr. 37-38; AE C, AE D(1)).

As the above summary reflects, Applicant has paid or resolved five of his ten SOR debts, and enrolled the other five debts in a DCP. As part of his DCP, Applicant participated in financial counseling. The DCP that Applicant submitted is measured and thorough. Beginning on October 15, 2021, Applicant began paying \$866 each month to the DCP by direct debit. Applicant will continue to pay that amount until the enrolled debts are satisfied or otherwise resolved. The DCP also prepared a monthly budget for Applicant that reflects that his total monthly income is \$8,300, which includes \$5,200 take home pay and \$3,100 in VA disability benefits. After all deductions, he has a net monthly remainder of \$240. (AE C)

Applicant rents a single family home on a military base for \$2,539 per month. That fee includes all utilities except for cable. His budget further reflects that he maintains a modest lifestyle and lives within his means. Applicant is current on all his other debts. (Tr. 39-40; AE C)

Character Evidence

Applicant submitted several documents to include his DD 214s, summaries of action and citations for his personal awards from his Marine Corps service, evaluations documenting his performance as a Marine from 2008 to 2016, civilian performance reviews documenting his performance as a Government contractor from 2018 to 2020, and six reference letters from former commanders and supervisors. The collective message these documents convey is that Applicant has honorably served his country for 20 years and five months as an active duty Marine, and continued his service as a Government contractor for the past four years. All of the individuals who submitted reference letters recommend and support continuation of Applicant's clearance. (Tr. 23; AE E – AE H)

While in the Marine Corps, he made five deployments, three to Iraq; and two Marine Expeditionary Unit deployments, one to the Gulf of Aden and the Persian Gulf, and the other to Bosnia. (Tr. 18) As noted, Applicant has been awarded a 100% VA total and permanent disability rating in part for combat-related injuries. (AE J)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 AG ¶ 2 describing 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 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 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case:

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

The evidence of record establishes concerns under AG ¶¶ 19(a) and 19(c). Further review is necessary.

AG ¶ 20 lists five potential mitigating conditions:

- (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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶ 20(b), 20(c), and 20(d) are fully applicable. Applicant underwent a contentious and costly divorce towards the end of his Marine Corps career. The financial fallout from that divorce continues to this day. Applicant has paid or resolved five of his ten SOR debts, and enrolled the other five debts in a DCP. As part of his DCP, Applicant participated in financial counseling. Applicant's DCP is measured and thorough. Beginning on October 15, 2021, Applicant began paying \$866 each month to the DCP by direct debit. Applicant will continue to pay that amount until the enrolled debts are satisfied or otherwise resolved. AG ¶ 20(e) is not applicable.

Applicant would have begun the process of addressing his delinquent debts sooner had he not received legal advice to wait until his debts fell off his credit report. Once Applicant was informed that this approach was not an acceptable means of debt resolution in the security clearance arena, he immediately took action to right his ship. Five of his debts are paid or resolved and the remaining five debts are enrolled in a DCP. Applicant has made significant or sufficient progress towards regaining financial responsibility in a deliberate and measured way. With this in mind, the adjudicative

guidelines do not require that an applicant be debt-free. The Appeal Board has established the following basic guidance for adjudications in cases such as this:

. . . 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). When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be responsible and reasonable. Given his resources, he has initiated a pragmatic approach to the repayment of the five remaining SOR debts and is making a good-faith effort to resolve them.

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's 20 years as an active duty Marine and four years as defense contractor while successfully holding a clearance weigh in his favor. He is current on his day-to-day expenses, lives within his means, and his SOR debts

have been resolved or are being resolved. He has provided evidence of being a productive, loyal, and responsible employee. Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a “meaningful track record” of debt repayment.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.j: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to continue Applicant’s security clearance. National security eligibility is granted.

ROBERT TUIDER
Administrative Judge