



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



In the matter of:)
)
) ISCR Case No. 22-01551
)
Applicant for Security Clearance)

Appearances

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

January 5, 2023

Decision

TUIDER, Robert, Administrative Judge:

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

Statement of the Case

On July 16, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On August 24, 2022, 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 CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 1, 2022, Applicant submitted his Answer to the SOR.

On November 2, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On November 3, 2022, DOHA issued a notice scheduling the hearing for December 9, 2022. I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 through 7 without objection. (Tr. 12) Applicant testified and

did not call any witnesses. I admitted Applicant Exhibits (AE) A-1 through A-6, B-1 through B-3, and C-1 through C-6 without objection. (Tr. 12-13) I held the record open until December 23, 2022, to afford Applicant an opportunity to submit additional evidence. (Tr. 74-75) Applicant did not submit any post-hearing documents. On December 20, 2022, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 48-year-old sheet metal mechanic work lead, who has been employed by a defense contractor since August 2019. He is a first-time applicant for security clearance. Successfully vetting for a clearance is a requirement of his continued employment. His employer has given him until January 24, 2023 to have his clearance issues resolved or face termination. (Tr. 13-18; GE 1)

Applicant graduated from high school in 1992. He was awarded a Bachelor of Science degree in business administration in 1996. (Tr. 18-20; GE 1) He married in 2007, and has two children, a 14-year-old son and an 11-year-old daughter. His wife is employed full-time as an assembler in the private sector. (Tr. 20-22)

Financial Considerations

Applicant's SOR lists nine allegations under this concern. These allegations are established by his July 16, 2019 SF-86; his September 23, 2019 Office of Personnel Management (OPM) Personal Subject Interview (PSI); his September 1, 2022 SOR Answer; his August 6, 2019, February 6, 2020, May 20, 2022, and October 26, 2022 credit reports; his July 16, 2022 Response to Interrogatories; and his hearing testimony. (GE 1 through 7; SOR Answer)

Applicant's financial difficulties began when his father passed away in 2002, and his mother passed away two years later in 2004. Applicant is one of three children from a traditional Vietnamese family. The three children split the costs of their parents' funerals with each contributing \$10,000 for their mother's funeral expenses, and each contributing \$15,000 for their father's funeral expenses. Additionally, the family incurred the further expense to reinter their father next to their mother's gravesite. (Tr. 22-26) Applicant charged his portion of his parents' funeral costs to his credit cards. (Tr. 26)

A coworker suggested that Applicant consolidate his credit card debt, which he did with a \$25,000 consolidation loan in 2011. (Tr. 26) However, shortly after he took out the consolidation loan, he was unemployed and was required to use consolidation loan funds to meet living expenses for his family. (Tr. 26) Applicant reported several periods of unemployment on his SF-86: June 2018 to January 2019; September 2015 to June 2016; September 2011 to September 2012; and February 2010 to July 2010. (Tr. 27-28; GE 1) Applicant drew unemployment compensation during those periods of unemployment and his wife continued to work; however, he was never able to recover from the income shortfalls from his loss of employment. (Tr. 28-29) In short, the

unplanned expenses for the funerals of both of his parents within a two-year period, and four periods of unemployment were circumstances beyond his control. (Tr. 29)

Up until 2019, Applicant was current on his bills, but he was carrying significant debt. (Tr. 34-35) In 2019, before he started his current job, he consulted a debt relief company (DRC) that advised him to stop paying his debts. Their counsel was that when his debts became delinquent, the DRC could negotiate settlements with his various creditors. However, shortly after discussing a recovery plan with the DRC, Applicant's wife was laid off due to Covid, and he was unable to afford the DRC monthly payments. (Tr. 39-40)

On July 16, 2022, Applicant entered into a 44-month plan with a debt consolidation company (DCC), approximately one month before his August 24, 2022 SOR was issued. He pays \$393 by direct debit to the DCC on the 15th and 30th of each month. He provided documentation of making timely payments to the DCC. The DCC uses these funds to pay off and/or settle his enrolled debts. (Tr. 38-39; AE C-1, AE C-2, AE C-3, AE C-4, AE C-5, AE C-6) Later, on November 9, 2022, Applicant signed an agreement with a law firm (LF) to resolve three of his SOR debts that evolved into civil lawsuits. (AE B-2, AE B-3) The applicability of these agreements are discussed further below.

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

SOR ¶ 1.a – **Charged-off credit card account for iPhone promotion in the amount of \$3,602.** This debt is enrolled with the DCC and will be settled and/or paid as funds become available. (Tr. 33-34, 36-38; AE C-2) **DEBT BEING RESOLVED.**

SOR ¶ 1.b – **Charged-off credit card account in the amount of \$10,929.** This creditor obtained a judgment against Applicant. Applicant retained the services of LF to resolve this debt. The LF stated in a letter dated December 7, 2022 that their office is working to amicably resolve with debt with a payment plan such that upon final payment, a satisfaction of judgment will be filed with the court. (Tr. 41-4; AE B-1, AE C-2) **DEBT BEING RESOLVED.**

SOR ¶ 1.c – **Charged-off credit card account in the amount of \$12,661.** Applicant used this credit card to pay for his parents' funeral. This debt is enrolled with the DCC and will be settled and/or paid as funds become available. (Tr. 47-53; AE C-2) **DEBT BEING RESOLVED.**

SOR ¶ 1.d – **Collection consolidation loan in the amount of \$10, 949.** This is the consolidation loan referred to above. Applicant retained the services of LF to resolve this debt. The LF stated in a letter dated December 7, 2022 that their office currently has a deadline to amicably resolve this matter by January 30, 2023 and expects that upon settlement, and payment, that the creditor will file a dismissal with prejudice. [Note – this is the same creditor as in SOR ¶ 1.g.] (Tr. 45-53; AE B-1, AE C-2) **DEBT BEING RESOLVED.**

SOR ¶ 1.e – **Collection medical account in the amount of \$366.** Applicant submitted documentation that he paid this debt on September 16, 2022. (Tr. 53-56; SOR Answer) **DEBT RESOLVED.**

SOR ¶ 1.f – **Collection credit card account in the amount of \$11,620.** This debt is enrolled with the DCC, who settled this account for the lesser amount of \$8,620, and is being paid in installments by the DCC. (Tr. 56-57; GE 3; AE C-2) **DEBT BEING RESOLVED.**

SOR ¶ 1.g – **Charged-off credit card account in the amount of \$9,677.** Applicant retained the services of LF to resolve this debt. The LF stated, in a letter dated December 7, 2022, that their office currently has a deadline to amicably resolve this matter by January 30, 2023, and expects that, upon settlement and payment, the creditor will file a dismissal with prejudice. [Note – this is the same creditor as in SOR ¶ 1.d.] (Tr. 57-60; AE B-1, AE C-2) **DEBT BEING RESOLVED.**

SOR ¶ 1.h – **Charged-off credit card account in the amount of \$3,264.** (Tr. 60-62; SOR Answer) Applicant submitted documentation that this account was “settled in full” on July 16, 2021. (Tr. 60-62; SOR Answer) **DEBT RESOLVED.**

SOR ¶ 1.i – **Collection credit card account in the amount of \$7,941.** Applicant retained the services of LF to resolve this debt. The LF stated, in a letter dated December 7, 2022, that their office currently has a deadline to amicably resolve this matter by February 2, 2023, and expects that, upon settlement and payment, the creditor will file a dismissal with prejudice. (Tr. 62-64; AE B-1, AE C-2) **DEBT BEING RESOLVED.**

As noted above, two out of the nine accounts are resolved, and Applicant has a plan in place to resolve the remaining debts. Applicant is paid at a rate of \$40 an hour, and estimates his annual salary to be in the range of \$70,000 to \$80,000. His wife’s annual salary is approximately \$36,000. He owns his home, valued at \$700,000, and he owes approximately \$330,000 on his mortgage. Applicant drives a 2006 Honda Pilot and his wife drives a 2003 Honda Accord. The liens on both vehicles are paid. (Tr. 29-32) Applicant sought financial counseling through his DCC, and he prepared a budget for DCC when he signed up for their service on July 16, 2022. Applicant’s combined monthly income is \$6,688, his total monthly expenses are \$5,848, his monthly deposit to DCC is \$786, and his net monthly remainder is \$54. (Tr. 32, 65-65; GE 7; AE C-1)

Before Applicant encountered his current financial difficulties, his credit score was in the 800 range. He currently has one credit card and only uses that when payment is required by credit card. He is committed to becoming debt free. This entire experience has been very stressful for his family and himself. He is not interested in filing bankruptcy because these debts are his and he wants to do what is right by paying them off. (Tr. 66-67) Applicant’s “biggest goal” is to pay his debts and get his security clearance. He does not want to go through this process the next time his security clearance comes up for renewal. (Tr. 68)

Character Evidence

Applicant submitted six reference letters to include his production site supervisor and direct supervisor, his site manager, and four co-workers. Collectively, these letters describe Applicant as hardworking, honest, reliable, trustworthy, a team player, family oriented, and as an asset to their respective organization. The authors of his reference letters enthusiastically support his application for a security clearance. (Tr. 69-72; AE A-1 – A-6)

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 security concerns under AG ¶¶ 19(a) and 19(c). Further review is necessary.

AG ¶ 20 lists five potentially applicable 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(e) is not applicable.

AG ¶¶ 20(b), 20(c) and 20(d) are fully applicable. The funeral expenses associated with the passing of Applicant's parents, and four periods of unemployment for himself and one period of unemployment for his wife, were all circumstances beyond his control. Applicant sought financial counseling with his DCC, and he is diligently making monthly payments to the DCC to underwrite the costs of settling his delinquent debts. He has paid off two of his SOR debts. He has retained LF to address the three creditors who have filed judgments against him. Applicant has demonstrated through his actions that he is determined to overcome his indebtedness. He knows that regaining

financial responsibility is essential to qualify for a security clearance and has taken reasonable and measured steps to resolve his debts.

Applicant entered into an agreement with a DCC to settle and/or pay off his debts one month before his SOR was issued. Given his available financial resources, the records support the fact that he is doing his best to pay off the creditors. 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) (citations and quotations omitted).

When taking into account Applicant's financial situation, I view his corrective efforts to be reasonable and responsible. He paid off two of his nine SOR debts and has a plan in place to resolve his remaining seven debts. Given the progress Applicant had made and continues to make, he should be debt-free before his 44-month agreement with the DCC expires.

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(a):

(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 into 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.

To review, Applicant is a 48-year-old sheet metal mechanic work lead, who has been employed by a defense contractor since August 2019. He fell into debt after a series of events beyond his control, and has taken reasonable and measured steps to regain financial responsibility. He recognized the importance of regaining financial responsibility, not only for purposes of obtaining a clearance, but also going forward as a productive member of society. He accepts responsibility for his debts and is committed to doing the right thing by his creditors.

Applicant's approach to resolving his debts is measured and responsible. I was impressed with his demeanor and sincerity. It is clear from his actions that he is determined to regain financial responsibility. He is well regarded by his employer. He and his spouse have jobs that will provide them with the income to repay their creditors. Applicant understands what he needs to do to maintain 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 SOR are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a – 1.i:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is granted.

ROBERT TUIDER
Administrative Judge