



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



In the matter of:)	
)	
)	ISCR Case No. 21-02509
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *pro se*

01/20/2023

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On March 11, 2022, in accordance with Department of Defense (DOD) Directive 5220.6, as amended (Directive), the DOD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. (Item 1) 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 responded to the SOR and elected to have his case decided on the written record, in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on August 12, 2022. Applicant received the FORM on August 19, 2022. Applicant did not object to the Government’s evidence, and he provided a response to the FORM (Item 10). The Government’s evidence included in the FORM and identified as (Items 1 through 4), is admitted without objection. The case was assigned to me on November 17, 2022.

Based on my review of the documentary evidence, I find that Applicant has mitigated financial consideration security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.a through 1.f., with explanations. (Item 1) Applicant, age 79 is married and has two adult children. He obtained an undergraduate degree in 1966. He is sponsored by his company, which he formed in 1988 and for which he is CEO. Applicant completed his security clearance application on January 29, 2021. (Item 2) He reported no military service. He has had a security clearance since 2007. (Item 2)

FINANCIAL

The SOR alleges that Applicant has six delinquent debts, with approximately \$112,000 in delinquencies. He disclosed that he incurred major business losses. He was earning \$600,000, but due to the downturn in the economy, his income adjusted down to \$200,000. (Item 3) He paid his employees and maintained his contractual obligation. He took no income from the business and lived on his social security. The loss of income was not due to any behavioral irresponsibility on subject's part. (Item 3)

Applicant attributes his financial situation to a large reduction in personal income due to business losses. His business did not survive. The Covid pandemic exacerbated his financial distress, which delayed the sale of his home in October 2020. His income in 2020 was \$20,000 and increased to \$138,720 in 2021. Applicant sold his house, cut his expenses, and paid the account in ¶1.d in full. (Item 3) He moved into his wife's home in another state, which is from a family trust. He also sold an apartment for \$950,000. (Item 3) He used the profits for living expenses. He was not able to make payments on bills. (Item 3)

As to SOR allegation ¶ 1.a, an account that was charged off in the approximate amount of \$26,748, Applicant submitted a Settlement Stipulation. He submitted documentation that he has made a \$10,000 payment on March 22, 2022 and five additional payments of \$750 ahead of the due date. He has five remaining payments. The remaining balance is \$3,750. (Response to FORM at 2)

As to SOR allegation ¶ 1.b, a charged-off mortgage account in the amount of \$24,997, this has been paid. It was for the home sold in 2020.

As to SOR allegation 1.c, a charged-off credit card account in the amount of \$21,561, Applicant has offered a settlement, but it has not been approved. (Response to FORM)

As to SOR allegation 1.d, a charged-off account in the amount of \$17,413, Applicant settled this debt for \$12,000 with a payment plan. He submitted three posted

checks in the amount of \$4,000 each beginning in 2021. It is resolved. (Response to Form at 3)

As to SOR allegation 1.e, a charged-off account in the amount of \$11,781, Applicant has not resolved this debt.

As to the SOR ¶ 1.f, Applicant has a charged-off account in the amount of \$9,992. This debt has not been resolved.

Applicant admitted in his 2021 interview that he does not dispute the debts that are listed on the SOR. He has paid other non-SOR debts in the meantime. He has paid a total of \$43,172.58 in payments toward his debts. (Response to FORM) He included documentation in the Response to FORM. He is budgeting his money, his larger debts are satisfied or in the process of being resolved. He now has no mortgages. He has been taking action to ameliorate the delinquent debts due to the business downturn. He received financial counseling and his credit report from 2022 shows accounts as "pays as agreed." (Item 4)

His gross annual income is now about \$125,000. His income after expenses is about \$3,000 to \$4,000 a month. He is using this money to build reserves in case of another business downturn. (Item 4) He is paying on another credit card listed in his credit report.

Applicant has paid, settled or is making progress toward his delinquent debts. He has presented sufficient evidence to mitigate the financial consideration concerns. He is working on a plan.

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 (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 EO 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR

Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues began with huge business losses and the pandemic in 2020. It delayed the sale of his home until 2020. His income in 2020 was \$20,000. He now has a stable income. He sold a home and an apartment to meet living expenses and pay debts. He reduced his debt by \$70,000 in the past ten months. Applicant has made substantial efforts to resolve his delinquent debts. For these reasons, I find SOR ¶¶ 1.a through f. for Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and Applicant's devotion to his country, I conclude that Applicant has presented sufficient mitigation. He encountered circumstances that were beyond his control. He did not ignore his debts. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1f:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge