



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



In the matter of:)	
)	
)	ISCR Case No. 21-02700
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on January 21, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2022.

The hearing was convened as scheduled on December 5, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an email and two attached documents, which I have marked AE H through J and admitted without objection.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1987 to 1991, in another branch of the military from 1991 to 1999, and back to the first branch from 1999 until he retired with an honorable discharge in 2013. He seeks to retain a security clearance, which he has held since he served in the military. He has a bachelor's degree earned in 1996. He married in 2003 and divorced in May 2019. He married his current wife in 2021. He has two children, ages 17 and 15. (Tr. at 20-26, 44, 49, 54; Applicant's response to SOR; GE 1, 2)

Applicant owned his own consulting business after his retirement from the military. He had a significant downturn in about 2017 to 2018 because he lost his eligibility for access to sensitive compartmented information (SCI) over an issue that was resolved in 2018. In about November 2019, the three government programs he was supporting through his company were either cancelled or cut to the point where he was no longer funded. He was essentially unemployed and unable to receive unemployment compensation because of his military retirement pay. Then in 2020, the COVID-19 pandemic hit, which affected his ability to find a contract. He received disability pay from the Department of Veterans Affairs, but his military retirement went to his ex-wife for alimony and child support. He lived off loans and credit cards, and then he was unable to pay the balances. He obtained a contractor job in May 2020 at a lower salary. He obtained a better-paying job in September 2020 and his current job in September 2022. (Tr. at 15-18, 23-25, 30-31, 38-39, 47, 54-55; Applicant's response to SOR; GE 1, 2)

The SOR alleges four delinquent debts totaling about \$98,658. Applicant admitted owing all of the debts at one time, but several of the debts have been settled.

Applicant contracted with a debt-settlement company in April 2020 to assist him in resolving his debts. He enrolled five debts, totaling \$97,964, in the company's debt-resolution program (DRP). Applicant agreed to make monthly payments of \$1,272 to the debt-settlement company to be held in an escrow account. The debt-settlement company agreed to negotiate settlements with his creditors and use the accumulated funds in the escrow account, minus their fees, to pay the settlements. Applicant made most of the monthly payments. By November 2022, his deposits totaled \$37,082. (Tr. at 17, 29-30, 47; Applicant's response to SOR; GE 1, 2)

Applicant enrolled a \$3,440 debt in the DRP. The debt was settled with a lump-sum payment of for \$2,204 in January 2021. That debt was not alleged in the SOR because it was resolved long before the SOR was issued. (Applicant's response to SOR; GE 3-5)

A \$7,243 debt was settled for \$4,394, through monthly payments of \$120 from January 2021 through April 2021, followed by monthly payments of \$652, with the final payment made in October 2021. This debt was alleged in SOR ¶ 1.a with a balance of \$2,928, based on a December 2021 credit report. The credit reports in evidence show the balance going down. The debt was resolved before the SOR was issued, but the

December 2021 credit report did not reflect the most recent payments. (Tr. at 26-32; Applicant's response to SOR; GE 3-5)

SOR ¶ 1.c alleges a \$14,022 debt to a credit union. The debt was listed with a \$19,982 balance in the July 2020 credit report; \$16,025 in the September 2021 credit report; and \$14,022 in the December 2021 credit report. The debt was settled for \$8,012, through monthly payments of \$667 from March 2021 through the final payment in January 2022. (Tr. at 34-36; Applicant's response to SOR; GE 3-5)

The debts alleged in SOR ¶¶ 1.b (\$14,353) and 1.d (\$67,355) are enrolled in the DRP. As of November 2022, the balance in the escrow account was \$15,802. The \$67,355 debt is the next debt to be settled once sufficient funds have been accumulated in the escrow account. (Tr. at 18, 32-34, 36-38, 48; Applicant's response to SOR; GE 3-5)

Applicant stated that his finances have improved. He is well compensated in his current job. His wife works and pays part of the household expenses. His obligation to pay alimony to his ex-wife ends next summer. He owes the IRS about \$6,000 for tax year 2021. He does not have a formal installment plan, but he has been making \$300 payments. He expected to earn a bonus, which he planned to use to pay off his taxes. He credibly testified that he plans to continue to pay his taxes and the DRP until his taxes and delinquent debts are resolved. He received advice from the debt-settlement company, but no formal financial counseling. (Tr. at 18-19, 22, 25, 39-50)

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 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.”

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 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 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

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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's financial issues were primarily related to his divorce and a downturn in his consulting business. He contracted with a debt-settlement company in April 2020, almost two years before the SOR was issued. He is making \$1,272 monthly payments into the DRP. By November 2022, his deposits totaled \$37,082. Three debts have been settled, including one that was not alleged in the SOR. As of November 2022, the balance in the escrow account was \$15,802. The \$67,355 debt is the next debt to be settled once sufficient funds have been accumulated in the escrow account. Applicant has a relatively minor tax issue that he is resolving responsibly. He credibly testified that he plans to continue to pay his taxes and the DRP until his taxes and delinquent debts are resolved.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant

need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant established that he has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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.d:	For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge