



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



In the matter of:)
)
) ISCR Case No. 21-02817
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2023

Remand 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 11, 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 February 8, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on May 13, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to the Defense Office of Hearings and Appeals (DOHA) to refute, extenuate, or mitigate the security concerns. He received the FORM on May 23, 2022. He responded with emails to Department Counsel on June 6, 2022, and June 22, 2022. He also apparently mailed documents directly to the DOD adjudication office at Fort Meade rather than to DOHA. The

documents were never forwarded to the administrative judge, who denied Applicant's request for a security clearance on December 19, 2022.

Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On January 23, 2023, the Appeal Board determined that there were due process issues with the decision and remanded the case to the administrative judge so that he could reopen the record and issue a new decision in accordance with Directive ¶ E3.1.35.

The previous administrative judge has retired. The case was assigned to me on January 25, 2023. I contacted Applicant and informed him that I had his two emails, a memorandum from him dated May 4, 2022, and a 12-page contract with a debt-settlement company. Those documents are marked Applicant's Exhibits (AE) A through D. I offered Applicant the opportunity to submit additional documents. He submitted three sets of documents, which I have marked AE E (3 pages), F (42 pages), and G (20 pages). The Government exhibits included in the FORM and AE A through G are admitted in evidence without objection.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He has worked for his current employer since about 2013. He served in the U.S. military from 1987 until he retired with an honorable discharge in 2014. He seeks to retain a security clearance, which he has held for decades. He has an associate's degree earned in 2012. His three marriages ended in divorce in 1999, 2009, and 2020. He has two adult children. (Items 1-3; AE B)

Applicant's divorce in 2020 left him with significant financial problems. He also suffered an injury that left him unable to work for a period, and he supported his daughter, who is a single mother with four children. (Items 1-6; AE B, E)

The SOR alleges 17 delinquent debts totaling about \$47,800. Applicant owed all of the debts at one time, as established through his admissions and credit reports. (Items 1-6)

Applicant contracted with a debt-settlement company in October 2019, more than two years before the SOR was issued. He notified his security office about his situation. He enrolled 29 debts, totaling \$92,750, in the company's debt-resolution program (DRP). Applicant agreed to make monthly payments of \$1,556 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. (Items 1-3; AE A-G)

Twelve accounts were settled by October 2021, including a \$9,661 account that was settled for \$5,314 in January 2020; a \$31,175 account that was settled for \$12,470 in March 2020; a \$1,210 account that was settled for \$666 in June 2020; a \$2,839 account that was settled for \$1,619 in September 2020; a \$2,780 account that was settled for \$1,585 in September 2020; a \$3,990 account that was settled for \$1,517 in

October 2020; a \$1,680 account that was settled for \$852 in March 2021; a \$1,231 account that was settled for \$555 in March 2021; and a \$1,795 account that was settled for \$719 in April 2021. The monthly payments were increased to \$1,660. Applicant continued to make the monthly payments, and additional accounts were settled. (Items 1-6; AE F)

The debt-settlement company had an arrangement with a bank. In June 2022, Applicant borrowed \$17,950 from the bank, which was used by the debt-settlement company to settle the remaining 14 accounts in the DRP. He is repaying the loan through monthly payments of \$925. He has made all of the required payments. He hopes that his actions have established that his financial affairs are back in order and that he is qualified to retain his security clearance. (Items 1; AE C-G)

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:

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, but were aggravated by an injury and his support for his daughter and grandchildren. He contracted with a debt-settlement company in October 2019, more than two years before the SOR was issued. He made monthly payments of \$1,556, which were later raised to \$1,660. A number of debts were settled before the SOR was issued. He continued to make the monthly payments until June 2022, when he borrowed \$17,950, which was used by the debt-settlement company to settle the remaining 14 accounts in the DRP. He is repaying the loan through monthly payments of \$925. He has made all of the required payments.

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 had 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 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. 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.q:	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