



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



In the matter of:)	
)	
)	ISCR Case No. 22-01688
)	
Applicant for Security Clearance)	

Appearances

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

02/17/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 9, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on October 20, 2022, and requested a hearing before an administrative judge. The case was assigned to me on January 9, 2023.

The hearing was convened as scheduled on January 20, 2023. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an email and two attached documents that I have marked AE D through F and admitted without objection.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked in security for his current employer or a predecessor company on the same contract since December 2020. He has a General Educational Development (GED) high school equivalency diploma. He has never married. He has one child. (Tr. at 21-22; GE 1)

Applicant had periods of underemployment and unemployment when he did not have medical insurance. (Tr. at 32-33; GE 1, 3) The SOR alleges a \$9,966 auto loan that was placed for collection and 20 delinquent medical debts totaling about \$10,560.

A credit report from February 2021 lists a \$9,966 auto loan that was placed for collection (SOR ¶ 1.c) and 19 medical debts totaling about \$9,523 that were placed for collection (SOR ¶¶ 1.a, 1.d-1.u). There were no other debts, such as credit cards, on the report. The \$64 medical debt alleged in SOR ¶ 1.b (addressed below) was listed on a June 2022 credit report. (GE 4, 5)

Applicant stated that he cosigned an auto loan for his mother in about 2016. They later became estranged, and he was unaware that she stopped paying the loan. It is unclear if the vehicle was ever repossessed. All three credit reporting agencies listed the loan on the February 2021 credit report as an individual account with a balance of \$9,966 (SOR ¶ 1.c). The activity date was January 2021. The loan is not listed on any of the later credit reports. Applicant credibly testified that he thought it was a joint loan, but he admitted that it is possible that he was the only one placed on the loan. He stated that in either event, his mother had possession of the vehicle and was supposed to pay the loan. (Tr. at 34-38; GE 4-6)

Applicant retained a law firm in about September 2022 to assist him in verifying the accuracy of debts on his credit report and disputing any inaccuracies. He also completed a financial counseling session. (Tr. at 18, 24-27, 40; Applicant's response to SOR; AE A-D, F)

The February 2021 combined credit report lists a medical debt in the amount of \$979, with a balance of \$90 (SOR ¶ 1.t). The debt was assigned in 2018, but the activity date was February 2021. This appears to indicate that the debt was paid down from \$979 to \$90. The debt is not listed on later credit reports. (GE 2, 4-6; AE F)

In about January 2022, Applicant paid a \$56 medical debt that was not alleged in the SOR. He paid \$64 (SOR ¶ 1.b) and \$78 (SOR ¶ 1.u) medical debts in September 2022. He testified that he paid a \$393 medical debt. While he did not submit payment documentation, a \$346 debt (SOR ¶ 1.q) is reported by TransUnion in February 2021 and September 2022, but not in January 2023. (Tr. at 39; GE 2,4-6; AE E, F)

The June 2022 Experian credit report (GE 5) listed the paid \$56 medical debt and unpaid debts of \$64 (SOR ¶ 1.b – addressed above) and \$938 (not alleged in the SOR). There are no other accounts of any kind reported. The November 2022 Equifax credit report (GE 6) listed a joint auto loan that was opened in August 2022, with a

balance of \$4,767, and a credit card account with Applicant as an authorized user. Both accounts are current. Applicant submitted credit reports from all three reporting agencies obtained in December 2022 and January 2023. The reports list the same joint auto loan and authorized-user credit card as listed on the 2022 Equifax credit report. There are no other accounts with balances. (GE 4-6; AE F)

Applicant's finances have stabilized. He lives a modest lifestyle. He is able to pay his current bills without accruing any additional delinquent debts. He pays \$147 per month on his auto loan, and he has some left over at the end of the month for savings and other issues. (Tr. at 23-24, 40-41; GE 5, 6)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2021. He reported that he had a protective order issued against him in 2018, but he answered "No" to all of the financial questions under Section 26, which included the following:

In the last seven (7) years, [have] you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)¹

Applicant credibly denied intentionally falsifying the SF 86. He stated that it was his first time filling out an SF 86, he did not have much help with it, and he filled it out to the best of his ability. (Tr. at 17-21, 41-42; Applicant's response to SOR; GE 1)

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

¹ There are other financial questions in the SF 86, but the SOR only alleged that Applicant falsified this question.

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 problems resulted from underemployment, unemployment, and medical issues when he was uninsured. The debts alleged in the SOR did not result from irresponsible spending. They are medical debts and an auto loan that he took out for his mother, with the understanding that she would pay it. Applicant is not financially sophisticated. He took the avenue that many others would, and he sought help from professionals. He paid some debts, and the law firm disputed others. I note that his earlier credit reports contained no accounts other than the auto loan and the medical debts, none of which are listed on his current credit report. He now has an auto loan. He is only an authorized user on a credit card.

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). Applicant does not present a perfect case in mitigation. Delinquent debts are a continuing concern until they are resolved. However, at some point, debts become old, unenforceable, charged off, fall off credit reports, and are no longer of interest even to the creditors. In essence, Applicant received a fresh start. I note that he has taken advantage of that fresh start, and he is maintaining fiscal responsibility. I believe he will continue to do so. I find that Applicant's

current finances do not cast doubt about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

SOR ¶ 2.a alleges that Applicant falsified the SF 86 when he failed to report the debts alleged in the SOR under the following specific question:

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).

There are other financial questions in the SF 86, but the SOR only alleged that Applicant falsified this question. To prove this allegation, the Government must prove by substantial evidence, among other things, that Applicant knew that he "had bills or debts turned over to a collection agency." After considering all the evidence, including Applicant's age, education, experience, the nature of his debts, the adverse information he reported under another question, and his credible testimony, there is insufficient evidence for a finding that Applicant intentionally falsified the question alleged in SOR ¶ 2.b or any other questions on the SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.b is concluded for Applicant.

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 Guidelines E and F in my whole-person analysis.

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 and refuted the personal conduct security concerns.²

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.u:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge

² The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the financial issues are completely mitigated, and it is unnecessary to further monitor Applicant's finances.