



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



In the matter of:)
)
) ISCR Case No. 21-00074
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Pro se

03/06/2023

Decision

Hyams, Ross D., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 18, 2019. On March 30, 2021, 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 August 11, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was assigned to me on September 6, 2022.

The hearing was convened on October 20, 2022. Department Counsel submitted Government Exhibits (GE) 1-6, which were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AE) A-D, which were admitted in evidence without objection. After the hearing, Applicant had a scheduled medical procedure, so I held the record open for seven weeks to provide him the opportunity to submit additional

documentary evidence. He timely submitted documents that I marked as AE E-K and admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e, and 1.h, and denied SOR ¶¶ 1.c, 1.d, and 1.g. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 59 years old. He was married in 2001, and has two children, one who is a minor. He earned a associates degree in about 2008. He has worked for a defense contractor for about 15 years as a designer of mechanical parts. (TR. 21-23; GE 1)

Applicant stated that he started taking college classes at a for-profit school in about 2006. He reported that he was working as a janitor at that time, and had a difficult time earning enough money to support his family. He stated that the school recruiter induced him to add extra courses to his studies to increase the value of his degree. He asserted that the information that he was provided was false, and these additional classes just increased his costs. He reported that in 2008, he had to make a \$9000 lump sum payment to the school, because they threatened to remove him shortly before he earned his degree. He stated that he took this money from his savings, and it created a financial hardship for his family. (Tr. 24-25, 32-34, 41-43; GE 3, 4, 5, 6)

In 2022, the U.S. Department of Education approved \$3.9 billion to discharge the student loans for students who attended this school from 2005 through 2016, before it was forced to shut down. Some of the reasons cited for the discharge were the lies and false promises made to students, and that the school intentionally mislead students and induced them to take student loans they would be unable to afford. (AE A, H, J)

Applicant stated that over the last ten years, his children have required expensive medical treatment for chronic medical conditions. This treatment included surgery for his daughter in 2012, and a medical device for his son in 2016. He reported that these unexpected medical expenses created a financial hardship for his family, and they were unable to afford to pay the full costs of this medical treatment at the time it was obtained. (Tr. 20, 23-25, 34-37, 44-46; GE 2)

The SOR alleges about \$35,000 of delinquent debt. This includes: \$6,104 of medical debt, \$28,621 of student loan debt, and \$908 for one consumer debt in collection. The status of the allegations is as follows:

SOR ¶¶ 1.a-1.f are medical debts in collection for \$108; \$108; \$1,138; \$3,800; \$715; and \$235, respectively. Applicant claimed that ¶¶ 1.a and 1.b were for x-rays, ¶ 1.d was for his daughter's surgery, and ¶ 1.e was for his son's medical device. He stated that he could not discern the origin of ¶¶ 1.c and 1.f. He reported that he was unable to pay all of the medical expenses up front. He claimed that he made some payments on the

surgery related debts debt until about 2016, and then was unable to afford regular monthly payments. He claimed that he called the creditors to set up a payment plan but was referred to the collection agencies. He stated that when he contacted the collection agencies, he found that they had inflated some of the balances. He claimed that he contacted the original creditor to determine the origin of the additional charges, and they told him that these charges were not part of their bill. Applicant stated that he came to believe that the collection agency was trying to gouge him, and he stopped working with them. At hearing, he was asked why he did not try to settle the medical debt for a lower amount, and he stated that he did not know that he could do that. He stated that these communications were done over the phone and that he does not have documentation of the contacts with these creditors. In a post-hearing submission, he provided a receipt showing a \$1,200 payment for a medical debt, and a payment plan to pay \$1,779 of a medical debt in \$99 monthly installments. (Tr. 20, 23-25, 34-37, 44-46; AE E, I; GE 2, 3, 4, 5, 6)

SOR ¶ 1.g is a debt in collection to a cellular phone service provider for \$908. Applicant denies this debt. He stated that he had had poor cellular service at his home, and transferred his service to another carrier. He claimed that the original provider billed him for a phone for which he had already paid. He claimed that shortly after receiving the bill, he disputed the charge. He asserted that the provider never took action on his dispute and moved the debt into collection. He stated that he has no documentation from the dispute, because it was done over the phone. (Tr. 43-44; GE 2, 3, 4, 5, 6)

SOR ¶ 1.h is a student loan in collection for \$28,261. Applicant reported that after graduation, he had a forbearance on his student loan repayments. He claimed that once the forbearance ended, he made two monthly loan payments of about \$600, and then the monthly payment was raised to over \$1,000 monthly. He stated that he was unable to afford this amount and stopped making payments. The record shows that the first major delinquency for his student loans was in 2016, and they went into collection status. He stated that in 2019, in an effort to resolve his delinquent debts, he requested forbearance from the lender to remove the loans from collection status. In 2022, Applicant was contacted by the Department of Education about the student loan discharge program for former students from the for-profit school. He applied for discharge of his student loans, and it was approved. This debt is now resolved. (TR. 24-25, 32-34, 37-40, 41-43; AE A, H, J; GE 2, 3, 4, 5, 6)

Applicant's budget shows that he and his wife's finances are stable, and they can afford their monthly expenses. Their current monthly income exceeds their expenses by about \$1,000. (AE G)

Applicant submitted some employment records, and three character references which state that he is a good and hardworking employee, involved in the community, and is trustworthy. (AE B, C, D, F, K)

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.

The SOR allegations are established by the credit reports and Applicant's admissions. AG ¶¶ 19(a) and (c) apply.

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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

Applicant's student loans are now resolved. The Department of Education determined that the students who were eligible for discharge had been lied to, told false promises about their education, and were misled to take out more loans than they could

afford. Applicant's medical debts were for treatment for his minor children and occurred due to circumstances beyond his control. He responsibly attempted to resolve the medical debt and the cellular phone service debt with his creditors, and disputed the latter debt. Applicant has made payment arrangements on the medical debts. These debts occurred long ago and under circumstances unlikely to recur, and does not cast doubt on the individual's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and (b) apply.

Applicant credibly testified and provided documentation that he has undertaken good-faith efforts to address his debts. Applicant is not required to show that he has paid or resolved all of his debts, or that he has done so in any particular way. He has shown that he has a reasonable plan to resolve his debts and has implemented it. AG ¶ 20(d) applies.

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 considered his employment records and character letters. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant's financial hardships did not arise out of irresponsible behavior or deliberately becoming financially overextended. He took action to address his delinquent debts, and did the best that he could for his particular circumstances. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the financial considerations and personal conduct 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.h:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

Ross D. Hyams
Administrative Judge