



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



In the matter of:)	
)	
)	ISCR Case No. 20-03298
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2023

Decision

PRICE, Eric C., Administrative Judge:

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

Statement of the Case

On December 16, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant submitted an undated response to the SOR, and requested a hearing before an administrative judge. The case was assigned to me on March 25, 2022. On April 28, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as

scheduled on June 6, 2022. Department Counsel offered seven exhibits marked as Government Exhibit (GE) 1 through 7; I sustained Applicant's objection to GE 2 and Department Counsel withdrew GE 5. I renumbered the remaining exhibits GE 1 through 5, overruled Applicant's objection to remarked GE 5 and admitted remarked GE 1 through 5 in evidence. (Transcript (Tr.) 27-36) The Government's exhibit list and pre-hearing disclosure letter, and my case management order dated May 4, 2022 are marked as Hearing Exhibit (HE) I through III. Applicant testified and offered no documentary exhibits. The record was held open until June 28, 2022, to permit Applicant to submit documents, which he did. Those documents were marked as Applicant Exhibit (AE) A through E and admitted into evidence without objection. DOHA received the hearing transcript on June 22, 2022.

Findings of Fact

The SOR alleges that Applicant filed Chapter 13 bankruptcy petitions in June 2016 and November 2019 that were dismissed due to his failure to file required information, and five delinquent debts, totaling approximately \$37,288, including a mortgage past-due in the amount of \$23,288. In response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.g, and denied the allegations in SOR ¶¶ 1.c and 1.e with explanation.

Applicant is 38 years old. He married in October 1998, separated in August 2018, and divorced in May 2019. He has one child, age eight, and two adult stepchildren ages, 18 and 20, from his marriage. He is engaged and has resided in his fiancé's home since May 2020, they have one child, age one. His two youngest children reside with Applicant. He attended technical school from March 2012 to October 2015 and has earned multiple certificates. He has been employed as a technician for a federal contractor since October 2016 and has been site lead since June 2020. He held a security clearance while on active duty in the Navy. (GE 1; Tr. 37-51, 135-136)

Applicant served in the United States Navy from October 2002 to October 2013 attaining the paygrade of E-6 and was honorably discharged. The stated reason for separation was "Disability, Severance Pay, Non-Combat" and he received "Disability Severance Pay" of \$70,148 when discharged. He completed extensive training and many schools while in the Navy, was qualified in submarines, earned multiple qualifications, and received numerous awards and decorations. (AE D)

Applicant attributed his financial difficulties to severe back issues that resulted in his medical discharge from the Navy and unemployment/underemployment, and to his former spouse's financial irresponsibility, separation, and divorce. He testified that he was bedridden for approximately 18 months before and after back surgery from sometime in 2013 until late 2014. He experienced significant back pain until a second surgery in 2015 alleviated most of his pain issues and enabled him to obtain employment as a federal contractor. He reported being unemployed from September 2013 to January 2014. From January 2014 to October 2014, he worked part-time doing administrative work for an auto repair business earning \$300 a week. He was employed as an installer or technician from

October 2014 to October 2016. (GE 1; SOR Response; Tr. 37-41, 40-56, 59-64, 73-85, 96, 107, 116-120; AE D)

The evidence concerning debts alleged in the SOR is summarized below.

SOR ¶ 1.a: mortgage account past due in amount of \$23,238 with outstanding balance of \$204,193. Credit reports from March 2019 and April 2020 reflect the account as past due for \$5,764 and \$23,238, respectively. In response to the SOR, Applicant admitted the mortgage account had been past due, but said it was then current and submitted evidence corroborating his claim. He testified that he obtained the mortgage in 2008, that it was delinquent in approximately 2013 and again in 2018. He attributed the 2018 delinquency to his wife's failure to make agreed upon payments while they were separated. He said that he was unaware that she missed payments and about a pending foreclosure because account statements were sent to her address. After she moved out, he returned to the family home, and filed for bankruptcy in November 2019 to forestall foreclosure. He moved in with his fiancé in May 2020 and has paid the mortgage with rental income from the property since. He provided a September 2020 loan modification agreement and account statements showing payments from November 2020 to May 2022. His balance due in June 2022, included the required monthly payment (\$1,414.74) and one overdue payment (\$1,414.74). This account is being resolved. (GE 2-3; SOR Response; Tr. 39-41, 44-48, 73-85, 124-126; AE B-C)

SOR ¶1.b: credit card account charged off for \$3,738. An April 2020 credit report shows the account as charged off with a past due balance of \$3,738. The credit report reflects delinquencies in 2015 and the last account activity in October 2019. In response to the SOR, Applicant admitted the account had been charged off and said that he was attempting to settle the account. He testified that his ex-wife had opened the account without his knowledge using a power of attorney that he had previously provided her, and thought that he had paid the card off in late 2021. He provided an email from the creditor dated June 13, 2022, stating his credit card account "was delinquent with a \$0.00 balance." This account is resolved. (GE 3; SOR Response; AE A at 1; Tr. 85-89, 121-126)

SOR ¶1.c: credit card account charged off for \$1,071. A March 2019 credit report shows the account was opened in 2007 and charged off for \$1,271 in February 2016. An April 2020 credit report reflects the account as charged off with a past due balance of \$1,071. In response to the SOR, Applicant denied the allegation stating that he thought the account had been paid. He testified that he had opened the joint account with his ex-wife and thought he paid it off in approximately 2018. He provided a letter from the creditor dated June 23, 2022 stating the account balance was \$0.00. This debt is resolved. (GE 2-3; SOR Response; Tr. 89-92, 127; AE E)

SOR ¶1.d: credit account charged off for \$8,791. A March 2019 credit report shows the account was opened in November 2011, 2007, charged off for \$8,791, and in collection. An April 2020 credit report does not reflect this account or delinquency. In response to the SOR, Applicant admitted the account had been charged off and stated

that he was attempting return the account to good standing. He testified that he was first delinquent on the account in about 2018 and had been making payments in accordance with an agreement. He provided a letter from the creditor dated June 8, 2022, confirming his compliance with a March 2021 payment arrangement, payments made totaling \$3,500, and an account balance of \$5,291. This account is being resolved. (GE 3; SOR Response; Tr. 92-94, 127; AE A at 3)

SOR ¶1.e: medical collection account for \$450. A March 2019 credit report shows the account was assigned for collection in July 2017 with a balance of \$450. An April 2020 credit report does not reflect this account or delinquency. In response to the SOR, Applicant denied the allegation and said that he paid the agreed upon copayment for dental work, and later received a bill from the dentist. He said that he contacted the collection agency and requested evidence the debt was legitimate. He testified that after receiving the bill, he contacted the dentist's office, that they agreed with him and demanded payment from his insurance company, that he had not been contacted about the debt since, and that it was no longer on his credit report. I find that GE 2 corroborates Applicant's testimony that the debt was resolved. (GE 2-3; Tr. 94-96)

SOR ¶¶1.f and ¶1.g: Chapter 13 bankruptcies filed and dismissed in June 2016, and November 2019, respectively. Applicant admitted the allegations, stating that he filed the bankruptcies to prevent foreclosure on his family home after unsuccessfully attempting to resolve the delinquencies, and after being advised by an attorney that bankruptcy would forestall foreclosure. He said that he filed for bankruptcy in June 2016 to prevent foreclosure after his wife failed to make payments while he was bedridden. He stated that the November 2019 bankruptcy filing was to prevent a second foreclosure on the family home because his wife failed to pay her share of the mortgage in accordance with their separation agreement, unbeknownst to him until he moved back into the home in 2019. (GE 2, 4; SOR Response; Tr. 30-31, 37-39, 99)

Applicant testified that he received financial counseling through a workshop and now uses a digital application to help manage his budget. He said that his financial condition has improved. He reported gross annual income of \$56,000 (federal contractor pay) with net monthly earnings of approximately \$2,800, and \$1,200 monthly disability payments (Department of Veterans Affairs (VA) disability payments for 80% permanent disability rating). After receiving the SOR, he reported developing and executing a plan to get his remaining debts in order. He reported retirement savings (\$9,159), a checking account (\$508), employer retirement account (\$8,000) and more than \$100,000 equity in a home purchased in about 2010 and occupied by his parents. (Tr. 40-41, 51-52, 98, 127-131; GE 4, 5; AE A at 4)

Policies

The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. SEAD 4, ¶ E.4. A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for assignment to a public trust position.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense 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.

Analysis

Guideline F: Financial Considerations

The trustworthiness 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

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

Applicant's admissions and record evidence establish that he has a history of financial problems dating back to at least 2016. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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.

AG ¶¶ 20(a) through 20(d) are established. Applicant has resolved or is resolving all five delinquent debts alleged in the SOR. His delinquent debts and bankruptcy filings occurred under unique circumstances unlikely to recur. His delinquent debts were largely beyond his control including his medical conditions resulting in his discharge from the Navy, lengthy recovery period, unemployment and underemployment, and his separation and divorce. He acted responsibly under the circumstances, received financial counseling, initiated and is adhering to good faith efforts to resolve his two largest debts. His handling of his finances does not cast doubt on his current reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the 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 public trust position 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 Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were already addressed, but some warrant additional comment.

Applicant is 38 years old, served in the United States Navy for 11 years, was honorably discharged because of service-connected medical disability in October 2014, and has been rated 80% permanently disabled by the VA. I also considered his extensive training and submarine qualifications, awards, decorations, and that he held a security clearance while in the Navy.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that [he] act responsibly given his circumstances and develop a reasonable plan for

repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant acted responsibly under the circumstances.

A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised under Guideline F, financial considerations, are mitigated.

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.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric C. Price
Administrative Judge