



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



In the matter of:)	
)	
)	ISCR Case No. 20-03293
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On March 26, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on September 15, 2021, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing on October 17, 2022, scheduling the hearing for November 14, 2022. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 7 without objection. Applicant testified. At Applicant's request, I kept the record open until December 28, 2022, for documentation. Applicant timely submitted documentation, which I collectively marked

as Applicant's Exhibit (AE A) and admitted without objection. DOHA received the hearing transcript (Tr.) on November 28, 2022.

Findings of Fact

Applicant denied all the SOR allegations. He is 38 years old, married, and he has one child. He obtained his general educational development certification in 2014. He was unemployed from December 2008 to June 2012, and from September 2015 to January 2017. He worked as a laborer for the same DOD contractor from June 2012 to August 2015, and from January 2017 to December 2018. He has worked as a laborer for a different DOD contractor since December 2018, through whom he is assigned to work at shipyards throughout the United States. He has never held a security clearance. He has resided in state A since 2013. (Answer; Tr. at 5-6, 8-10, 24-25, 48-52, 65-66, 75; GE 1, 5; AE A)

The SOR alleged that Applicant had six delinquent student loans, totaling approximately \$25,539. (SOR ¶¶ 1.a-1.f) The delinquent student loans are reported on credit bureau reports from 2017 to 2020. They were not reported on credit bureau reports from 2022. (Tr. at 40-43; GE 2-4, 7; AE A)

Applicant maintained that he was a victim of identity theft given that he has not attended school beyond high school, and never applied for student loans. He opined that someone must have stolen his identity during a period when he briefly resided with acquaintances in approximately 2012 in state B (where the student loans were incurred), before moving to state A in 2013. (Answer; Tr. at 5-6, 25-48, 53-80; GE 1, 3, 5; AE A)

Applicant first learned that student loans were incurred in his name, without his permission, in 2013, when he began receiving telephone calls from a school located in state B seeking payment on the loans. He communicated with the school and unsuccessfully attempted to obtain further information about the individual who stole his identity. He also telephoned the student loan creditor, who instructed him to file a dispute with the credit reporting agencies. He also telephoned the state B police department and attempted to file a report, but he was told he had to file a police report in person or online. He recalled receiving a garnishment letter from the school, in approximately 2015, but he did not recall whether his employer garnished his pay before he became unemployed that August. He telephonically disputed the student loans with the credit reporting agencies in 2017, May 2019, and October 2019, and he was informed that they would send a dispute letter to the school on his behalf. (Answer; Tr. at 5-6, 25-48, 53-80; GE 1, 3, 5; AE A)

In 2021, Applicant attempted multiple times to file an online police report with the state B police department, but his responses to the questions did not permit him to do so, and he was told that he had to file a police report in person. He went to the state A police department and attempted to file a courtesy police report with state B, but he was told that he could not do so. At one point, he and his spouse discussed hiring an attorney to further assist him, but they could not afford the attorney's fees with their income. He intends to continue disputing these student loans on his credit reports. (Answer; Tr. at 5-6, 25-48, 53-80; GE 1, 3, 5; AE A)

During his background interview, Applicant favorably described his financial situation. He indicated that he and his spouse, who worked as a nail technician, were able to financially support their family. He does not have any other delinquent debts. He has not received credit counseling. Since approximately 2002, he has worked with a credit repair law firm to try to build his credit so he and his spouse can purchase a home. He also monitors his credit through Credit Karma (Tr. at 72-74; GE 5; AE A)

Policies

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(a), 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 Exec. Or. 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* Exec. Or. 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 credit bureau reports, which reflect the student loans incurred in Applicant's name, raise AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Before the SOR, Applicant made multiple attempts to report that he was a victim of identity theft and to dispute the student loans reported on his credit bureau reports. They are no longer reported on the 2022 credit bureau reports, and he intends to continue to dispute them. He does not have any other delinquent debts. His finances are under control, and they do not continue to cast doubt on his judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(d), and 20(e) are established.

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. 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 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.f:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge