



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



In the matter of:)	
)	
)	ISCR Case No. 21-02223
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2023

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 December 20, 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 January 12, 2022, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 11, 2022, scheduling the matter for a video teleconference hearing on November 14, 2022. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 4 without objection. Applicant testified but did not submit documentation or call witnesses. At Applicant's request, I left the record open until December 12, 2022, for him to submit documentation.

Applicant timely submitted documentation, which I collectively marked as AE A and admitted without objection. DOHA received the hearing transcript (Tr.) on November 28, 2022.

SOR Amendment

At the hearing, Applicant stated that he does not have a middle name. As such, I *sua sponte* amended the caption of the SOR, pursuant to ¶ E3.1.17 of the Directive, to strike the middle initial “N.”

Findings of Fact

Applicant denied all the SOR allegations. He is 56 years old. He married in 1987, separated in 2017, divorced in 2018, and remarried in 2019. He has two adult children, a son and a daughter. He earned an associate degree in 1988 and a bachelor’s degree in 1997. He has worked for various DOD contractors, both in the United States and overseas, since 2010, except for periods of unemployment from December 2011 to April 2012 and January 2014 to August 2014. He has lived and worked overseas as a system administrator for his employer who is a DOD contractor, since 2017. He and his ex-spouse have co-owned a home in the United States since 1996, and she resides in the home. He has never held a security clearance. (Answer; Tr. at 28; GE 1-2)

The SOR alleged that Applicant has a \$54,203 charged-off student loan. (SOR ¶ 1.a) It also alleged that he failed to file, as required, his federal and state income tax returns for tax years (TY) 2019 and 2020. (SOR ¶¶ 1.b-1.c) Applicant’s delinquent student loan is listed on credit bureau reports from September 2020 and April 2021, and he discussed it during his January 2021 interview with a background investigator. He reported his failure to timely file his relevant income tax returns in his November 2021 response to interrogatories. (Tr. at 18-; GE 2-4)

In approximately 2011, Applicant co-signed with his daughter the student loan at issue, with the understanding that she would be responsible for repaying it. When she graduated from college, she told him that she was repaying the student loan through a repayment plan. He was unaware that the student loan was delinquent until he began to receive email correspondence from the creditor in approximately 2019. He then contacted his daughter and reiterated to her that the loan was her responsibility. He also told her to communicate with the creditor to request a forbearance, since she was unemployed at that time. She told him that she would, and she also informed him that the creditor permitted her to remove him as a co-signer from the loan. (Tr. at 18-25, 31-32, 34-45; GE 2-4; AE A)

Documentation from the creditor reflects that in September 2019: the creditor informed Applicant’s daughter that she was solely responsible for the loan; the creditor released the cosigner from all future responsibility for repayment of the loan; Applicant’s daughter was solely responsible for repaying the loan; and the outstanding balance was \$41,753. Applicant relied on this information and believed he was no longer responsible for his daughter’s student loan. He disputed the student loan with the three major credit

bureaus. The December 2022 credit bureau reports reflect that his disputes were successful, and the credit bureaus deleted the loan from his credit reports. (Tr. at 18-25, 31-32, 34-45; GE 2-4; AE A)

Applicant attributed his failure to timely file his relevant federal and state income tax returns to his move overseas in 2017, his inability to locate documents necessary for filing those returns, and his misunderstanding after speaking with an IRS representative that he was able to file his federal income tax returns every three years so long as he did not owe taxes. His tax accountant filed these income tax returns between January and February 2022. He timely filed his income tax returns for TY 2021 and 2022, and he did not owe taxes. He understood that he was legally required to file his federal and state income tax returns annually, and he expected to file his future income tax returns accordingly. (Answer; Tr. at 25-27, 32-33, 46-51)

As of the date of the hearing, Applicant earned \$130,000 annually, or approximately \$9,000 monthly. He also received \$500 monthly in rental property income. His spouse owned their residence, but he contributed to the household expenses. His estimated monthly net remainder, after expenses, was approximately \$3,000 to \$5,000. He had approximately \$22,000 in his savings account and \$175,000 in his retirement savings accounts. He received financial counseling in approximately 2008. He does not have any other delinquent debts. (Tr. at 27-34, 36, 45-46; GE 3-4; 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not paying a student loan for which he cosigned with his daughter. He also failed to timely file his federal and state income tax returns for TY 2019 and 2020, as required. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

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;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Conditions beyond Applicant's control contributed to the delinquent student loan that Applicant cosigned with his daughter. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Before he received the SOR he consulted with his daughter in 2019 when he began to receive email correspondence from the student loan creditor, and he relied on her indication to him that the creditor permitted her to remove him as a cosigner from the student loan. December 2022 credit bureau reports reflect that he successfully disputed the student loan with the three major credit bureaus, and the loan was deleted from his credit reports.

Applicant filed his federal and state income tax returns for TY 2019 and 2020 in early 2022. He also timely filed his income tax returns for TY 2021 and 2022, and he did not owe taxes. He understood that he was legally required to file his federal and state income tax returns annually, and he expected to file his future income tax returns accordingly. He received financial counseling in approximately 2008. 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(c), 20(d), 20(e) and 20(g) 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.c:	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