



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



In the matter of:)
)
) ISCR Case No. 21-02428
)
Applicant for Security Clearance)

Appearances

For Government: Mark A. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2023

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 November 19, 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 November 29, 2021, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 14, 2022, scheduling the hearing for November 7, 2022. Due to my scheduling conflict, DOHA issued an amended notice of hearing on October 19, 2022, rescheduling the hearing for November 17, 2022. I convened the hearing as rescheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through G without objection. Applicant testified and called his spouse as a witness. At Applicant's request, I left the record open until December 8, 2022, for additional documentation. Applicant submitted additional documentation, which I collectively marked as AE H and admitted without objection. DOHA received the hearing transcript (Tr.) on December 1, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.k, 1.m, and 1.n, and he denied SOR ¶1.l. He is 61 years old, married, and he has two adult children. He graduated from high school in 1979, and he attended some college but did not earn a degree. He served honorably in the U.S. Navy from 1982 until he retired in 1998. He has worked for various DOD contractors since 1999, except for two periods of unemployment from February 2014 to October 2014 and February 2016 to April 2016. He has worked as a field engineer for his employer, a DOD contractor, since April 2017. He has also worked as a part-time overnight stocker for a retail corporation since August 2018. He was first granted a security clearance in 1985. As of his October 2020 security clearance application (SCA), he owned a home since 1999. (Answer; Tr. at 5-6, 8-9, 31-33, 66, 71-73, 85-86; GE 1-2)

The SOR alleged that Applicant had 13 delinquent consumer debts totaling \$44,956. (SOR ¶¶ 1.a-1.m) It also alleged that he failed to file, as required, his federal income tax return for tax year (TY) 2019. (SOR ¶ 1.n) The SOR allegations are established by Applicant's admissions in his Answer, his SCA, his interviews with a background investigator in January 2021 and February 2021, and three credit bureau reports from 2021 to 2022. (Answer; GE 1-5)

Applicant attributed his financial difficulties, and his failure to timely file his federal income tax return for TY 2019, to a loss of income from approximately October 2015 to February 2016, when his previous employer experienced issues receiving funds from its contract with the U.S. Government. As a result, his employer decreased his monthly work hours from 160 hours to 20 to 30 hours. His employer ultimately lost its contract, and he was unemployed from February 2016 to April 2016, as noted above. Although he obtained another job, his annual income decreased from \$85,000 to \$52,000. Simultaneously in 2016, his spouse lost her job due to an injury, and her disability claim was rejected. He has since been the sole breadwinner. (Answer; Tr. at 16-18, 68-76, 78-79, 81, 89-90; GE 1-2; AE H)

In 2017, Applicant sought advice from a bankruptcy attorney, who advised him to cease payments on his debts and provide his creditors with the bankruptcy attorney's information. He did so, and he stopped hearing from his creditors. He ultimately elected to resolve his debts on his own because he could not afford the bankruptcy attorney's fees. In 2018, as noted above, he obtained a part-time job to supplement his income so that he could address his debts. He completed his federal income tax return for TY 2019, but because his financial constraints affected his ability to pay approximately \$2,000 in federal taxes he expected to owe for that tax year, he did not timely file that return. He learned about several of his delinquent debts through the security clearance process. He

was tackling his debts one at a time and he intended to resolve them all. (Answer; Tr. at 16-18, 68-76, 78-79, 81, 89-90; GE 1-2; AE H)

SOR ¶ 1.a is a \$8,324 payday loan in collection. Applicant intends to contact the creditor to set up a \$100 monthly payment plan to resolve this debt as soon as he has the financial means to do so. (Answer; Tr. at 34-36; GE 2-4; AE H)

SOR ¶ 1.b is a \$6,706 payday loan in collection. In January 2020, Applicant entered a payment arrangement with the creditor of \$200 monthly to resolve this debt. He made five payments of \$100 between September 2021 and November 2021, and two payments of \$100 in October 2022 and November 2022. As of November 2022, his outstanding balance was \$4,177. (Answer; Tr. at 36-38, 40-41; GE 2-5; AE A, H)

SOR ¶ 1.c is a \$2,438 payday loan in collection. In December 2021, Applicant entered a payment arrangement with the creditor of \$25 monthly until November 2029, and a final payment of \$13 in December 2029, to resolve this debt. In October 2022, he made a \$25 payment, and his outstanding balance was \$2,163. (Answer; Tr. at 41-44; GE 2-5; AE B, H)

SOR ¶ 1.d is a \$1,901 account in collection. Applicant intends to contact the creditor to set up a monthly payment plan to resolve this debt as soon as he has the financial means to do so. (Answer; Tr. at 44-46; GE 3, 5; AE H)

SOR ¶ 1.e is a line of credit charged off for \$941. Applicant intends to contact the creditor to set up a monthly payment plan to resolve this debt as soon as he has the financial means to do so. (Answer; Tr. at 46-48; GE 2, 4-5)

SOR ¶¶ 1.f, 1.i, 1.l, and 1.m are four credit cards with the same creditor, in collection for \$732, \$99, \$1,360, and \$899, respectively. Applicant entered a payment plan of \$50 monthly to resolve SOR ¶¶ 1.f and 1.i. He was making payments toward SOR ¶ 1.i since April 2020, and he paid it in August 2021. He made his \$50 monthly payments toward SOR ¶ 1.f from August 2021 to October 2021, and he paid SOR ¶ 1.f in October 2022. (Answer; Tr. at 48-50, 52-53, 57-62, 82-85; GE 2-5; AE C, E, H)

Applicant contacted the creditor regarding the debts in SOR ¶¶ 1.l and 1.m. He reached a payment plan for one, and he was referred to another creditor for the other and that creditor had no record of the debt. He re-contacted the creditor in November 2022 to inquire about SOR ¶¶ 1.l and 1.m, and the creditor informed him that it could not find either of these accounts. He intends to dispute these debts. (Answer; Tr. at 48-50, 52-53, 57-62, 82-85; GE 2-5; AE C, E, H)

SOR ¶ 1.g is a \$423 credit card in collection. Applicant entered a payment plan with the creditor in September 2020 of \$50 monthly to resolve this debt. He made \$50 monthly payments in September 2021 and October 2021, and he paid this debt in February 2022. (Answer; Tr. at 50; GE 2-5; AE D, H)

SOR ¶ 1.h is a \$419 charged-off account. He made \$25 monthly payments to resolve this debt in full. (Answer; Tr. at 50-52; GE 2-5)

SOR ¶ 1.j is a \$12,120 charged-off loan. In March 2019, Applicant entered a payment arrangement with the creditor of \$100 monthly until May 2029 to resolve this debt, and he made payments accordingly. In July 2022, he increased his monthly payments to \$150. He expected to resolve this debt, in accordance with his revised payment arrangement, in January 2028. (Answer; Tr. at 53-55; GE 2-5; AE F, H)

SOR ¶ 1.k is an outstanding auto loan balance of \$8,594. Applicant's car was repossessed in approximately 2018, and he owed \$15,000. He testified that his car was sold at auction for more than his outstanding balance, and the creditor mailed him a check for the difference. (Answer; Tr. at 55-57, 81-82, 91; GE 1-5; AE H)

SOR ¶ 1.n relates to Applicant's failure to timely file, as required, his federal income tax return for TY 2019. As noted above, he completed his federal income tax return for TY 2019, but because his financial constraints affected his ability to pay approximately \$2,000 in federal taxes he expected to owe for that tax year, he did not timely file that return. He mailed his federal income tax return for TY 2019 in July 2021, and then he re-sent it to the IRS in December 2021 after the IRS informed him that it did not receive it. He simultaneously submitted a payment request form. He timely filed his income tax returns for TY 2020 and 2021. (Answer; Tr. at 17, 62-65, 86-92; GE 1-2; AE G, H)

Although not alleged in the SOR, Applicant owes \$1,129 for TY 2019, approximately \$1,800 in federal taxes for TY 2020, and approximately \$2,000 in state taxes for TY 2020 and 2021. He received a federal refund for TY 2021, which the IRS did not intercept and apply to his outstanding federal taxes for TY 2019. He contacted the IRS, and the IRS told him that it would accept a monthly payment arrangement of \$500 to resolve his TY 2019 debt. He intends to enter such a payment arrangement as soon as he has the financial means to do so. He has been paying the state tax authority \$195 monthly towards his TY 2020 and 2021 taxes. (Answer; Tr. at 17, 62-65, 86-92; GE 1-2; AE G, H)

Applicant earns \$68,000 annually from his full-time position. He earns \$300 bi-weekly from his part-time position. He receives \$1,195 monthly in military retirement pay and \$725 monthly in retirement pay from a previous employer. He has approximately \$7,000 in his 401(k)-retirement savings account. He was current on his \$1,305 monthly mortgage payment. He expected to satisfy his car loan in full in February 2022, which would free up \$600 that he intended to apply toward his remaining debts, to include his outstanding federal taxes. He does not have any other delinquent debts. He had not obtained credit counseling but intended to do so. His spouse manages the household expenses, and they pay their bills together. She stated that he is a trustworthy and honorable man. Four individuals, to include Applicant's site lead, attested to Applicant's trustworthiness, reliability, and good judgment. (Tr. at 31-32, 64-71, 76-79, 85-86, 89-90, 92-95; GE 1; AE H)

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 being able to pay his debts. He also failed to timely file his federal income tax return for TY 2019, 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; 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 Applicant's financial problems. 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 a bankruptcy attorney in 2017; he obtained a part-time job in 2018 to supplement his income so that he could begin resolving his debts; he entered a payment arrangement for SOR ¶ 1.j in 2019 and for SOR ¶¶ 1.b, 1.g, and 1.i in 2020; and he paid SOR ¶ 1.i in August 2021. He filed his federal income tax return for TY 2019 in December 2021. He paid SOR ¶¶ 1.f and 1.g in February and October 2022, respectively. He has a payment plan in place to address SOR ¶ 1.c. He intends to dispute SOR ¶¶ 1.l and 1.m, and he intends to pay SOR ¶ 1.a. He also intends to pay his outstanding federal taxes and he makes payments in accordance with a payment plan to address his outstanding state taxes, which are not alleged in the SOR. He timely filed his income tax returns for TY 2020 and 2021. He expected to satisfy his car loan in full in February 2023, which would provide him with \$600 monthly that he planned to use to continue to address his remaining debts. 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), 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.n:	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