



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



In the matter of:)
)
) ISCR Case No. 21-01247
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: Troy Nussbaum, Esq.

03/28/2023

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 July 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 1) on August 9, 2021, and he requested a hearing before an administrative judge. The case was assigned to an administrative judge on March 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 27, 2022, scheduling the hearing for August 31, 2022. On August 16, 2022, Department Counsel amended the SOR (amended SOR), pursuant to ¶ E3.1.13 of the Directive, to add allegations numbered as subparagraphs ¶¶ 1.o, 1.p, and 1.q under Guideline F. Applicant responded to the amended SOR (Answer 2) on September 16, 2022.

DOHA issued a notice of hearing cancellation on August 29, 2022, after Applicant retained an attorney and the administrative judge granted his request for a continuance. DOHA issued a second notice of hearing on September 8, 2022, scheduling the hearing for October 12, 2022. The case was reassigned to me on October 4, 2022. With no objection from Department Counsel, I granted Applicant's request for a conversion from an in-person hearing to a video teleconference (VTC) hearing, due to COVID-19 concerns. DOHA issued a third notice of hearing on October 7, 2022, scheduling the matter for a VTC hearing on October 12, 2022. I convened the hearing as rescheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5 and 7, and Applicant Exhibits (AE) A through P, without objection. Applicant objected to GE 6, consisting of court records printed from an online database service, on the basis that it was vague, incomplete, and prejudicial. I overruled Applicant's objection and admitted GE 6 in evidence. Applicant also objected to GE 8 and 9, consisting of reports of investigation summarizing Applicant's background interviews with an authorized DOD investigator in 2014 and 2020, on the basis that the reports were not authenticated. I sustained Applicant's objection and did not admit GE 8 and 9 in evidence. Applicant testified. At his request, I left the record open until November 9, 2022, for additional documentation. Applicant timely submitted additional documentation, which I collectively marked as AE Q and admitted without objection. DOHA received the hearing transcripts on October 21, 2022.

SOR Amendment

At the hearing, Department Counsel amended the case number in the caption of the SOR, pursuant to ¶ E3.1.17 of the Directive, to correct it from "20-01247" to "21-01247."

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.p and denied SOR ¶ 1.q. (SOR; Answer 1; Amended SOR; Answer 2) He is 32 years old, single, and he does not have any children. He graduated from high school in 2008. He attended college from August 2008 to May 2009 and January 2010 to May 2011, and he earned an associate degree. He has worked for various DOD contractors since 2011. He worked as an information technology monitoring specialist for his employer, a DOD contractor, since July 2018. He was first granted a security clearance in approximately 2014. (Answer; Tr. at 6-8, 22-24, 29, 57, 111; GE 7; AE L, M)

The SOR alleged that Applicant had five delinquent consumer debts totaling \$25,075 (SOR ¶¶ 1.a, 1.h, 1.j, 1.n, 1.o); six delinquent student loans totaling \$26,688 (SOR ¶¶ 1.b-1.g); four delinquent medical debts totaling \$906 (SOR ¶¶ 1.i, 1.k-1.m); a \$2,484 judgment entered against him October 2019 for an eviction action filed by a former landlord (SOR ¶ 1.p); and at least five eviction actions brought against him from 2015 to 2021 for failure to timely pay his rent (SOR ¶ 1.q). The SOR allegations are established by Applicant's admissions in Answer 1 and Answer 2; his May 2020 security clearance

application (SCA); four credit bureau reports from 2013, 2020, 2021, and 2022; and court records. (Answer 1; Answer 2; GE 1-7)

Applicant attributed his financial difficulties to his financial immaturity, mismanagement, and a lack of income. In addition, his former girlfriend became unemployed during the COVID-19 pandemic, and her inability to contribute to their household expenses compounded his financial problems. He began working with a nonprofit credit counseling agency in September 2022 to resolve SOR ¶ 1.o, as well a credit card not alleged in the SOR that was not delinquent. He pays the credit counseling agency \$273 monthly, and the agency makes payments to both creditors on his behalf. (Tr. at 30, 43-45, 48-51, 53-55, 65-66, 69-75, 105-107, 109-110, 112-114, 116-119, 121-123, 125-126; GE 7; AE I-K, P-Q)

SOR ¶ 1.a is a \$13,158 charged-off auto loan. Applicant co-signed this loan with his former girlfriend in approximately 2015, with the understanding that she was responsible for repaying it. She stopped paying the loan when they ended their relationship shortly after they purchased the car. When the creditor contacted him at an unrecalled date, he made several payments of an unrecalled amount until he could no longer afford to do so, and then the creditor repossessed his former girlfriend's car. He made a mistake co-signing this loan for his former girlfriend, and he learned not to co-sign for anyone in the future. In approximately 2018, he made several payments of an unrecalled amount, but he could not consistently afford to do so. He contacted the creditor in approximately August 2022. In September 2022, he reached a payment arrangement with the law firm collecting the debt on the creditor's behalf, consisting of bi-weekly payments of \$170. He made two payments of \$340 in October 2022 and November 2022, and he set up the remaining payments through automatic deductions. (Answer 1; Tr. at 24-29, 60-61, 63, 65, 75-81, 109-110, 113-115, 123-125; GE 1-4, 6; AE A, K, Q)

Applicant incurred approximately \$25,000 in student loans while attending college from 2010 to 2011. (SOR ¶¶ 1.b-1.g) After his 2011 graduation, he made an unrecalled number of monthly payments, between \$100 and \$150, but stopped because he could no longer afford such payments. He believed his loans were then deferred until an unrecalled date. The creditor garnished \$366 from his wages bi-weekly, from December 2019 to April 2020, and then stopped due to the COVID-19 student loan payment pause. He made a \$30 payment in August 2021. In September 2022, he contacted the creditor and entered into a rehabilitation agreement consisting of \$5 monthly payments for nine to ten months, after which time the creditor would determine a new monthly payment plan. He scheduled his \$5 monthly payments for automatic deductions. Although his payments were paused due to the COVID-19 pandemic forbearance, he made a \$100 payment in October 2022, and his first \$5 payment under the rehabilitation agreement was scheduled for January 2023. He intends to comply with the rehabilitation agreement and continue to resolve his student loans. (Answer 1; Tr. at 29-33, 48-50, 81-84, 109-110; GE 1, 3-5; AE B-C, K, Q)

SOR ¶ 1.h is a \$2,619 collection account for the outstanding balance on his apartment lease that he rented with a roommate in approximately 2014. He did not recall the amount of his monthly rent. He stated in Answer 1 that he contacted the management company to verify this debt and was referred to a collection agency. When he contacted

the collection agency, it did not have a record of this debt, and he was further researching it to see if it was referred to a different collection agency. In August 2022, he settled and paid this debt for \$2,108. (Answer 1; Tr. at 33-35, 95-107, 113-116, 121-123; GE 3; AE D)

SOR ¶¶ 1.i and 1.k through 1.m are Applicant's medical debts. He was unaware of them until he received the SOR, and then researched them through Credit Karma. He paid SOR ¶ 1.i in September 2022. He consolidated and settled SOR ¶¶ 1.k through 1.m and made an initial payment of \$40 in August 2021; he made \$50 monthly payments from September 2021 to July 2022; and the creditor notified him in August 2022 that he paid these debts. He reached a preauthorized recurring payment arrangement for SOR ¶ 1.l, consisting of a one-time payment of \$40 in August 2021, followed by \$50 monthly payments from September 2021 to October 2022. (Answer 1; Tr. at 35-37, 40-41, 84-87; GE 1, 3, 4; AE E, G, H)

SOR ¶ 1.j is a \$453 collection account with a pet hospital. Applicant settled this debt for \$295 in August 2021. In July 2022, his outstanding balance was zero after he made a final payment of \$147. (Answer 1; Tr. at 37-40, 85; AE F)

SOR ¶ 1.n is an \$84 gym account in collection. Applicant was unaware of this debt until he received the SOR. He paid this debt in August 2021. (Answer 1; Tr. at 41-42, 87-95; AE H)

SOR ¶ 1.o is a \$704 past-due loan. Applicant obtained a \$10,000 loan in March 2020 so that he could pay his daily living expenses, and he missed one or two payments on the loan. He was resolving this debt through the credit counseling agency, as discussed above, and the loan was in good standing. The credit counseling agency made a payment on his behalf to this creditor in September 2022 and October 2022, for \$203 and \$211, respectively. (Tr. at 42-45, 66-75, 109-110; GE 1, 7; AE I-K)

SOR ¶ 1.p is a \$2,484 judgment entered against Applicant in October 2019 for an eviction action filed by his former landlord. Applicant lived in this apartment complex with his former girlfriend until several weeks before the hearing, when he moved in with his parents. He did not receive any court notices concerning eviction proceedings filed by this landlord, and he was never evicted from this apartment. He acknowledged that he was delinquent in his rent payments. Applicant contacted the creditor in August 2022 and was in the process of negotiating a payment arrangement to resolve this debt. He made a \$1,000 payment in November 2022 as a showing of good faith. (Tr. at 45-50, 95-107, 113-116, 121-123; GE 6; AE K, O, Q)

At least five eviction actions were brought against Applicant from 2015 to 2021, for failure to timely pay his rent. As with SOR ¶ 1.p, he maintained that he never received court notices concerning eviction proceedings, and he was never evicted from any of his residences. He acknowledged that he was delinquent in his rent payments at various residences, and he received notices from his landlords concerning his delinquent rent. (SOR ¶ 1.q; Tr. at 51-53, 95-107, 115-116, 121-123; GE 6)

Applicant developed a budget with the help of the credit counseling agency. He moved in with his parents several weeks before the hearing to save money so that he could continue to resolve his debts. His annual salary in 2018, when he started working for his employer, was \$83,000; as of the date of the hearing, it was approximately \$92,000. His monthly net income was \$4,116, and his monthly net remainder was approximately \$1,769 after expenses, which included payments to the credit counseling agency. He also received credit counseling through the credit counseling agency, through which he learned how to manage his expenses with a budget and how to begin a savings account. He understood the importance of responsibly managing his finances. His manager rated his performance favorably for the July 2019 to July 2020 rating period. She described him as reliable and stated that he was “turning into one of my go[-]to team members.” Ten individuals, to include a sibling, life-long friends, former coworkers, and coworkers, attested to his trustworthiness, reliability, and judgment (GE 7-8, 23-24, 43-45, 48-51, 53-65, 107-109, 111-121, 125-126; AE I-K, M-N, P-Q)

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.

Applicant has a history of not being able to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

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; and

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

Conditions beyond Applicant's control contributed to his 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. He made some payments toward SOR ¶ 1.a in approximately 2018, before he received the SOR, but stopped because he could no longer afford to do so. He was unaware of most of his debts, to include the eviction actions brought against him between 2015 and 2021, until he received the SOR. Once he learned about his debts, he took action to resolve them.

Applicant paid SOR ¶¶ 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, and 1.n. He had payment arrangements for SOR ¶¶ 1.a through 1.g. He made payments in accordance with his arrangement for SOR ¶ 1.a in October 2022 and November 2022, and his payments for SOR ¶¶ 1.b through 1.g were scheduled to begin in January 2023. Apart from that, he made two payments of \$30 and \$100, toward SOR ¶¶ 1.b through 1.g, in August 2021 and October 2022, respectively. Since September 2022, he was working to resolve SOR ¶ 1.o through the credit counseling agency, who made two payments of \$203 and \$211 on his behalf in September 2022 and October 2022, respectively. He contacted the creditor for SOR ¶ 1.p in August 2022 and was in the process of negotiating a payment arrangement to resolve this debt, and he made a \$1,000 payment in November 2022 as a showing of good faith.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payment on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant does not have any other delinquent debts. He received credit counseling through the credit counseling agency. He has demonstrated a good-faith effort to address his debts, and he has the means to continue to resolve his remaining debts. I find that Applicant's finances do not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) 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.q:	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