



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



In the matter of:)	
)	
)	ISCR Case No. 21-02725
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 21, 2023. The hearing was convened as scheduled on March 29, 2023. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant’s Exhibits (AE) A through F, which were admitted without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since September 2022. He earned a bachelor’s degree in 2009.

He is married with a child from the marriage, a child from a previous relationship, and a stepchild. (Tr. at 21-23; GE 1, 4)

Applicant had financial issues about 10 to 12 years ago after his oldest child's mother moved out. He worked for a number of defense contractors in the same geographic area from 2013 through 2021. By 2020, with the exception of his student loans, his finances had stabilized. The COVID-19 pandemic adversely affected his wife's employment. He was working remotely, so he could work from anywhere. In October 2021, they moved to a state with better financial opportunities. In about January 2022, Applicant lost his remote job when his employer required their workers to return to the facility. He was unemployed until he obtained his current job in September 2022. (Tr. at 19-23, 26-28; Applicant's response to SOR; GE 1-5; AE A)

The SOR alleges three defaulted federal student loans with balances totaling about \$122,550; \$13,381 owed for a timeshare; a credit card that was \$928 past due with a \$7,418 balance; and three debts to the same credit union that were past due for a total of \$1,474. The debts are listed on one or more credit reports.

Applicant's federal student loans were in deferment until about 2017. He did not realize that they were no longer deferred, and he did not pay them. His federal student loan payments were paused pursuant to COVID-19 relief. He is not required to make the loan payments. The pause was extended several times. It is currently extended through June 2023. (Tr. at 25-37, 40-42; Applicant's response to SOR; GE 2-5; AE A, F)

Applicant's application for loan relief under the Student Loan Debt Relief Plan was approved. Because of the college he attended, he may be eligible for additional relief. A number of lawsuits were filed challenging the program. The Department of Education informed Applicant:

We reviewed your application and determined that you are eligible for loan relief under the Plan. We have sent this approval on to your loan servicer. You do not need to take any further action.

Unfortunately, a number of lawsuits have been filed challenging the program, which have blocked our ability to discharge your debt at present. We believe strongly that the lawsuits are meritless, and the Department of Justice has appealed on our behalf. Your application is complete and approved, and we will discharge your approved debt if and when we prevail in court. We will update you when there are new developments. (AE A)

Applicant has consistently and credibly denied that he purchased a timeshare. He and his wife traveled to Mexico in 2019 for the sales pitch, but he insists that he never signed a sales contract, and he only became aware of the debt when it appeared on a credit report. The debt is reported by TransUnion and Experian on the July 2020 combined credit report. He retained a company to help him dispute inaccurate items on his credit report. The timeshare debt (SOR ¶ 1.b) is listed on the October 2022 Experian

credit report with the comment, "Consumer dispute following resolution." It is not listed on the March 2023 Equifax credit report." (Tr. at 21, 34, 37-40; Applicant's response to SOR; GE 2-5; AE A, E, F)

SOR ¶ 1.e alleges a credit card debt that was \$948 past due, with a balance of \$7,418, as reflected on an October 2022 credit report. This account was listed on the July 2020 combined credit report as current with a \$0 balance. Applicant used the card for living expenses while he was unemployed. He made payment arrangements with the creditor to pay \$276 per month, starting in December 2022. He documented that he made \$276 payments in December 2022, January 2023, and February 2023. (Tr. at 43-45; Applicant's response to SOR; GE 2-5; AE A, F)

SOR ¶¶ 1.f, 1.g, and 1.h allege three debts to the same credit union that were past due for a total of \$1,474, with balances totaling about \$59,250, as listed on an October 2022 credit report. The debts are for a credit card (SOR ¶ 1.f - \$986 past due, \$43,845 balance), an auto loan (SOR ¶ 1.g - \$439 past due, \$12,882 balance), and a line of credit (SOR ¶ 1.h - \$986 past due, \$2,522 balance). None of the three debts were reported as past due on the July 2020 credit report. Applicant contacted the credit union. The auto loan and the line of credit accounts are now current, and the balances have been reduced to \$11,226 and \$2,338. He plans to address the credit card account next. (Tr. at 45-50; Applicant's response to SOR; GE 2-5; AE A, F)

Applicant's current finances are better since he returned to work. He has not received formal financial counseling, but he maintains a budget. He credibly testified that he plans to continue to pay his debts, and he will pay his student loans when the pause is over and the lawsuit is resolved. (Tr. at 37, 50-58; Applicant's response to SOR; GE 5; AE F)

Applicant volunteers in his church. He called a witness, and he submitted letters attesting to his moral character. He is praised for his dependability, honesty, work ethic, trustworthiness, and integrity. (Tr. at 58-62; AE B, C)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(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.

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 EO 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* EO 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 financial problems, including defaulted student loans and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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
- (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.

Applicant had some financial issues about 10 to 12 years ago after his oldest child's mother moved out. By 2020, with the exception of his student loans, his finances were stable. The COVID-19 pandemic adversely affected his wife's employment. In October 2021, he moved his family to a state with better financial opportunities. In about January 2022, he lost his remote job when his employer required their workers to return to the facility. He was unemployed until he obtained his current job in September 2022.

Applicant has not been employed that long, but he made strides in addressing his finances. His student loans are paused. His application for loan relief under the Student Loan Debt Relief Plan was approved, and he may be eligible for additional relief. He credibly disputed owing the timeshare debt. Three of the four remaining debts are current or being paid, and he is in discussions with the credit union for the fourth debt. He credibly testified that he plans to continue to pay his debts, and he will pay his student loans when the pause is over and the lawsuit resolved.

Applicant's finances are not perfect, but perfection is not required. A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant established that he has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.¹

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.h: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

¹ The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant's finances.