



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



In the matter of:)
)
) ISCR Case No. 21-02796
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: Personal Representative

05/05/2023

Decision

Hyams, Ross D., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 31, 2018. 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). He responded to the SOR on February 24, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 17, 2022.

On December 15, 2022, DOHA issued a notice scheduling the hearing for January 19, 2023. When the hearing convened, Applicant reported that his personal representative was unexpectedly unable to attend that day, and requested a continuance. The hearing was reconvened on January 25, 2023, a mutually agreeable date. Department Counsel submitted Government Exhibits (GE) 1-8, which were admitted in evidence without objection. Applicant testified but did not submit any documentation at the hearing. I held the record open for an additional two weeks to provide Applicant the

opportunity to submit documentary evidence. He timely submitted documents that I marked as Applicant's Exhibits (AE) A-J and admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted SOR ¶¶ 1.a-1.c, 1.e, 1.f, and 1.j-1.o. He denied SOR ¶¶ 1.d, 1.g-1.i, and 1.p. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 31 years old. He has never married, and has one minor child. He earned a bachelor's degree in 2015. He was granted a security clearance in about 2018, and he works as a junior systems administrator for a government contractor. (Tr. 23-27; GE 1)

After graduating college, Applicant worked in retail and was laid off when the store closed in about September 2016. This caused a financial burden until he found employment with a government contractor after about two months. He worked for this employer for about two years before he was laid off in August 2018, when the contract ended. He found new work two months later, with a different government contractor, in November 2018. He asserted that the 2018 period of unemployment is one of the main reasons for his financial problems. He stated that he did not have enough money to meet his expenses, and utilized his credit cards, worked at a grocery store, and borrowed money from family during this time period. The record shows that in 2018, he only made about half of his current salary. (Tr. 20-38; GE 1, 8; AE J)

Applicant stated that in 2019, his roommate broke their lease early and absconded without paying some apartment fees and utility bills. Applicant's car was also repossessed that year, which left him with greater transportation and commuting expenses. He stated that he prioritized paying back family members who loaned him money after he was laid off. He asserted that he did not have enough funds to repay the credit cards he used while unemployed. (Tr. 20-38; GE 1, 8)

After the COVID-19 pandemic started in 2020, Applicant's pregnant girlfriend became unemployed. He assisted her with her monthly expenses for about ten months. After their son was born in October 2020, he paid for their living expenses and some of the costs of the baby. In about April 2021, his son started attending daycare, and Applicant has been paying approximately \$700 monthly for it since then. Applicant also had a \$1500 state tax debt that he paid off with \$133 monthly payments from April 2021 to March 2022. The tax debt is now resolved and was not alleged in the SOR. (Tr. 20-60, 86-91; AE A, D, I)

In late 2021, Applicant realized that he did not earn enough money to meet his monthly expenses and repay his delinquent debt. He met with a debt consolidation expert and a credit repair expert to assist him with resolving his financial delinquencies. Both experts advised him to consult with a bankruptcy attorney. While Applicant's consumer

and medical debt only totaled about \$8,300, his attorney advised him to file a Chapter 7 Bankruptcy to get a fresh start on his finances. Applicant also received credit counseling during this time and developed a monthly budget. He filed a Chapter 7 bankruptcy in June 2022, and his debts were discharged in September 2022. (Tr. 20-38, 73-91; GE 5, 6, 7; AE G, H)

The SOR alleges about \$30,000 of delinquent debt, including: \$21,876 of student loan debt, \$1,830 of medical debt, and \$6,553 of consumer debt. The status of the allegations is as follows:

SOR ¶¶ 1.a-1.c, 1.e, and 1.f are federal student loans in collection totaling \$21,876. Applicant attended college between 2010-2015. He stated that after graduation, he had a forbearance on the loans for about a year. In 2017, he made some \$115 monthly payments, but these stopped in early 2018 because he could not afford them with his salary and monthly expenses at the time. In December 2022, he contacted the lender to enroll in a fresh start program. As part of his post hearing submission, Applicant provided a letter from the lender stating that his student loan payments were paused as part of the President's student debt relief program, and that he would not have to make payments while the litigation is ongoing. His most recent credit report shows these loans as current, and it's likely these federal student loans were also placed in the Covid-19 forbearance program. (Tr 38-60, 73-86; GE 2, 3, 4, 8; AE B)

SOR ¶¶ 1.d, 1.m, and 1.n are credit cards charged off for \$3,067, \$90, and \$1,050, respectively. Applicant stated that he used these credit cards for his living expenses while he was laid off in 2018, and that these debts were discharged in his 2022 bankruptcy. The bankruptcy records show that the first two debts were discharged, but not the last one. (Tr. 20-38, 60-64; GE 2, 3, 4, 6, 7, 8)

SOR ¶¶ 1.g, 1.j, and 1.k are medical debts placed for collection for \$961, \$509, and \$360, respectively. Applicant stated that two of the medical debts (1.g and 1.k) were discharged in his 2022 bankruptcy, and the bankruptcy record reflects this. He was not sure why the third debt (1.j) was not included in the bankruptcy. He stated that since January 2023 he has been making \$50 monthly payments to this creditor and provided documentation showing his last payment from February 2023. (Tr. 20-38, 64-66; GE 3, 4, 6, 7, 8; AE C)

SOR ¶ 1.h is a debt in collection to a cellular phone service provider for \$581. Applicant claimed that he disputed this debt because it was a work phone that he returned, but the billing continued. He stated that this debt was discharged in his 2022 bankruptcy, but it is not listed on the bankruptcy petition. (Tr. 20-38, 67-71; GE 3, 4, 6, 7, 8)

SOR ¶ 1.i is a debt in collection to a cellular phone service provider for \$561. Applicant claimed that he disputed this debt because he traded in his phone when he switched carriers and the new carrier was responsible to pay off the debt. He stated that

this debt was discharged in his 2022 bankruptcy, but it is not listed on the bankruptcy petition. (Tr. 20-38, 67-71; GE 3, 4, 6, 7, 8)

SOR ¶ 1.l is a debt in collection for a cable tv and internet provider for \$360. Applicant claimed that this is one of the bills that his roommate left him with after absconding early from their apartment. He stated that this debt was discharged in his 2022 bankruptcy, but it is not listed on the bankruptcy petition. (Tr. 20-38, 67-71; GE 3, 4, 6, 7, 8)

SOR ¶ 1.o is a debt in collection for apartment rental fees for \$607. Applicant claimed that he was left with these fees when his roommate absconded early from their apartment lease. He stated that this debt was discharged in his 2022 bankruptcy, but it is not listed on the bankruptcy petition. (Tr. 20-38, 67-71; GE 3, 4, 6, 7, 8)

SOR ¶ 1.p is a debt in collection to a cellular phone service provider for \$284. Applicant claimed that he disputed this debt because he traded in this phone when he switched carriers and the new carrier was responsible to pay off the debt. He stated that this debt was discharged in his 2022 bankruptcy, but it is not listed on the bankruptcy petition. (Tr. 20-38, 67-71; GE 3, 4, 6, 7, 8)

Applicant's budget shows that his net monthly income is about \$4,100, and that he has about \$560 leftover after he pays his monthly expenses. (Tr. 38-60; GE 8; AE G, H)

Applicant submitted five character reference letters, which state that he is a valued employee, a respected member of the community, reliable, and trustworthy. (AE I)

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.

The SOR allegations are established by the credit reports, bankruptcy filings, and Applicant's admissions. AG ¶¶ 19(a) and (c) apply.

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.

The record shows that Applicant's student loans (SOR ¶¶ 1.a-1.c, 1.e, and 1.f) are in "current" status, and the lender has halted repayment pending the completion of litigation of the President's loan forgiveness program. He contacted the lender to establish a fresh start program when his finances stabilized after his bankruptcy. Applicant consulted with a debt consolidation expert and a credit repair expert to resolve his delinquent debts and stabilize his finances. They advised him to consult with a bankruptcy attorney. Applicant did so, and filed Chapter 7 bankruptcy to discharge many of his debts. He used legal and proper means to address his delinquent debt and get a fresh start financially. His seeking of expert and professional advice about his finances, and use of the legal system to file bankruptcy are viewed as responsible behavior in this case.

Applicant's financial hardships mainly occurred from 2018 to mid-2021, and he has taken appropriate steps to resolve debts that became delinquent during this time period.

AG ¶ 20(a) only partially applies since he did not submit sufficient documentation to show that all of his debts are paid or being resolved.

AG ¶ 20(b) applies. Applicant's financial hardships were caused by temporary unemployment and circumstances beyond his control. He has acted responsibly under the circumstances by seeking expert advice, filing bankruptcy, and contacting creditors to resolve debts and arrange payment plans.

AG ¶ 20(c) applies. Applicant has received financial counseling from legitimate and credible sources, and there are clear indications that the problem is being resolved or is under control.

Applicant provided sufficient evidence that he has undertaken good-faith efforts to address his debts. Applicant is not required to show that he has paid or resolved all of his debts, or that he has done so in any particular way. He has a reasonable plan to resolve his debts and has implemented it. AG ¶ 20(d) applies.

AG ¶ 20(e) does not apply. While Applicant appears to have a reasonable basis to dispute the legitimacy of some of his past-due debt, he did not provide documented proof to substantiate the basis of the dispute or of actions to resolve the issues.

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 considered his character letters. 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 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.p: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

Ross D. Hyams
Administrative Judge