



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



In the matter of:)	
)	
)	ISCR Case No. 22-00794
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, or those concerns were not established. Eligibility for access to classified information is granted.

History of the Case

On May 2, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on May 10, 2022. He requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 3, 2023, and the hearing was convened as scheduled on February 21, 2023, using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government’s exhibit list and its discovery letter sent to Applicant were marked as HE I

and II. Applicant testified, but he produced no documents for the hearing. The record was held open to allow Applicant to submit additional evidence, which he did in the form of AE A-C. All were admitted without objections. DOHA received the hearing transcript (Tr.) on March 2, 2023.

Findings of Fact

Applicant admitted all but one of the allegations, to the extent that the accounts were his, but not that they were delinquent. The remaining account, he was unaware of, which will be treated as a denial. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 57-year-old employee of a federal contractor. He has worked for his current employer as a senior field engineer since December 2018. He has worked for federal contractors since retiring from the U.S. Army in 2007. He is married for the third time (1986-1999; 2003-2011; 2012-present). He has four children, ages 35, 33, 10, and 8. He holds a bachelor's degree and is a few hours away from earning his masters. (Tr. 5-6, 20, 24; GE 1-2)

Applicant retired from the Army in 2007, at the rank of sergeant major (paygrade E-9). During his 21 years of service, he served in overseas locations over nine years. He first deployed for Desert Storm in 1990-1991. Over the years, he deployed six more times to the Southwest Asia region. His last deployment was in 2005. He received numerous decorations for his service as reflected on his discharge certificate (DD-214), including: the Meritorious Service Medal (third device); the Army Commendation Medal (fourth device); and the Army Achievement Medal (fifth device). (Tr. 19-20, 45; AE A)

The SOR alleged that Applicant had a mortgage account that went to foreclosure and 10 past due, collection, or charged-off debts. (SOR ¶¶ 1.a-1.k) With the exception of SOR ¶¶ 1.d-1.h, the debts are established by entries on credit reports from November 2019, July 2022, and February 2023. I gave no weight to GE 5 because it offered no probative information about Applicant's alleged specific debts, and it referred to a credit report that was not included in the exhibit. Regarding SOR ¶¶ 1.d-1.h, the record contains no evidence that those specific debts were in a past due, charged off, or collection status. In Applicant's SOR answer, he only admitted to having those accounts, not to any delinquencies. I find that the Government failed to establish those debts as delinquent. (GE 1-6; Answer to SOR)

Applicant explained that his financial difficulties started in 2019 when his rental property became vacant after a long-term tenant left. He was unable to secure another tenant and the expenses of maintaining that property, along with his residential property caused increased financial distress. Additionally, he and his current spouse separated for a time, requiring him to support two separate households. They are back together now. During this time, he used credit cards to make repairs to the rental property and his residence. He admitted going through a bankruptcy in 1995, where he had approximately \$74,000 in debts discharged (this was not alleged in the SOR and will not be used by me

as a basis for disqualification, but I may consider this information as it could relate to his credibility, the applicability of any mitigating conditions, and in assessing the whole-person factors). He provided a copy of his written budget that shows his current financial position is much improved. His latest credit reports show that he had several large-balance accounts that he is making timely payment on and he has reduced or eliminated the balances on several of these accounts. (Tr. 21-22, 48; AE B)

The status of Applicant's delinquent debts is as follows:

SOR ¶ 1.a-\$1,344. Applicant admitted this credit-card debt. He thought he used it to purchase a television and other consumer goods. There is a discrepancy among the credit reports as to the last activity date. One stated that the last activity was in October 2019, and two others stated it was September 2017. He testified that he has attempted to resolve this account by contacting the creditor, only to find out the account was sold to some other creditor or collection service. He is still attempting to resolve this debt. (Tr. 26-27; GE 3-4, 6, Answer to SOR)

SOR ¶ 1.b-\$146,000 (Mortgage Foreclosure). Applicant admitted this debt as described above concerning his rental property. His efforts to address this debt included trying to secure tenants for this rental property, continuing to make the mortgage payments for several months while he was able to do so, and attempting to sell the property. The bank foreclosed before he could sell it. Applicant has never been contacted about a deficiency after the foreclosure. (Tr. 28-29; GE 3-4, 6; Answer to SOR)

SOR ¶ 1.c-\$19,145 (Second Mortgage Foreclosure). Applicant admitted this debt as described above concerning his rental property. His efforts to address this debt included trying to secure tenants for this rental property, continuing to make the mortgage payments for several months while he was able to do so, and attempting to sell the property. The bank foreclosed before he could sell it. Applicant contacted the bank in 2019 and was told there was nothing to be done with this debt because of the foreclosure. His most recent credit report contained this entry regarding this debt: "Account Previously In Dispute - Now Resolved By Data Furnisher, Collateral Released By Creditor/balance Owing." (Tr. 29-30; GE 3-4, 6; Answer to SOR)

SOR ¶ 1.d-(Current Mortgage Account). The Government failed to establish that this debt was delinquent. (Tr. 30-31; GE 1-6; Answer to SOR)

SOR ¶ 1.e-(Credit Card). The Government failed to establish that this debt was delinquent. (Tr. 31; GE 1-6; Answer to SOR)

SOR ¶¶ 1.f-1.h-(Bank Loans). The Government failed to establish that these debts were delinquent. (Tr. 33-36; GE 1-6; Answer to SOR)

SOR ¶ 1.i-\$653. Applicant admitted this credit-card debt. He testified that he has attempted to resolve this account by contacting the creditor, only to find out the account was sold to some other creditor or collection service. He is still attempting to resolve this

debt and is awaiting a settlement offer from the current debt holder. (Tr. 37; GE 3-4, 6, Answer to SOR)

SOR ¶ 1.j-\$3,889. Applicant admitted this credit-card debt. He testified that he has attempted to resolve this account by contacting the creditor, only to find out the account was sold to some other creditor or collection service. He is still attempting to resolve this debt and is awaiting a settlement offer from the current debt holder. (Tr. 38; GE 3-4, 6)

SOR ¶ 1.k-\$738. Applicant explained that this is an education debt for which he was erroneously charged. He initially took a class, but he dropped the class within the timeframe allowed. He was still charged for the class. He has disputed this debt. It no longer appears on his two most recent credit reports. (Tr. 39; GE 4, 6)

Applicant's monthly income, from all sources, is approximately \$13,700, and his monthly expenses are approximately \$6,200, leaving a monthly remainder of \$7,500 to address his remaining debts. He testified that he put his life in harm's way for this country numerous times and that he would never do anything to jeopardize the United States. (Tr. 56-57; AE B)

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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that were unpaid or unresolved. Some of the alleged debts, SOR ¶¶ 1.d-1.h, were not established as being delinquent, but for the remaining debts the above disqualifying conditions are raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 faced circumstances beyond his control when his tenant vacated his rental property and he could no longer afford to pay the mortgage on that property, his residential mortgage, and the separate household for his wife when they temporarily separated in 2019. He acted responsibly by paying the mortgage for several months and sought a renter, before he could no longer afford to do so. He also attempted to sell the property, but the bank foreclosed before a sale could be accomplished. Both the first and second mortgage accounts on the rental property were resolved by the foreclosure and Applicant was never notified of any deficiencies. These difficulties led to him having to use credit cards during that time. While he certainly should have pursued resolving his credit-card debts in a timelier fashion, he was hindered by the subsequent sales of the accounts to secondary creditors. He is pursuing resolution of those accounts. His two recent credit reports show his history of paying his debts and paying off or significantly reducing numerous large-balance accounts. There are clear indications that his debts are being resolved and that he is making good-faith efforts to do so. Applicant reasonably disputed an educational debt. All the above mitigating conditions substantially apply.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. I considered Applicant's military service, including his nine years of service in foreign countries, his seven deployments between 1990 and 2005, his decorations, and his financial difficulties related to his rental property. While Applicant could have been timelier in resolving of his debts, he is working toward resolving the unpaid credit cards.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude 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.k:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge