



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



In the matter of:)
)
) ISCR Case No. 22-01436
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2023

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, Financial Considerations. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 2, 2020. On November 1, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on December 20, 2022, and provided Exhibits (AX) A through E. He elected a decision on the written record by an administrative judge from

the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On January 30, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including Government's Exhibits (GX) 1 through 5. Applicant received the FORM on February 9, 2023. He responded on March 7, 2023, and provided a statement with additional information and Exhibits AX F-O. (FORM Response) Department Counsel did not object to the statement or exhibits.

The case was assigned to me on April 11, 2023. The SOR and the Answer (GX 1) are the pleadings in the case. GX 2-5, AX A-O, and the FORM Response are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a-1.h and denied SOR ¶ 1.i with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact:

Applicant is 42 years old. He is married and has three children. Over the last twenty years, he has been consistently employed in various full-time positions. From 2007 through 2010, he took some college courses, but did not obtain a degree. Since July 2018, he has been with his current employer as a review manager. (GX 2-3)

The SOR alleges two delinquent federal student loans totaling about \$21,500 (SOR ¶¶ 1.a, 1.c); three delinquent credit card accounts totaling about \$6,750 (SOR ¶¶ 1.b, 1.g, 1.i); a delinquent personal loan totaling about \$3,625 (SOR ¶ 1.d); and three delinquent phone and cable bills totaling about \$3,500 (SOR ¶¶ 1.e, 1.f, 1.h). In addition to Applicant's admissions, the debts are established by Applicant's June 2021 and January 2022 credit reports. (GX 4-5)

Applicant stated that his financial issues began in 2018. Fearing his company would lose the contract he was working on, he left the job and took a \$10,000 pay cut to work with his current employer. By mid-2019, he struggled to maintain a budget and stopped paying on several bills. (GX 1, 3; AX G; FORM Response)

In January 2020, shortly after submitting his SCA, Applicant contacted a debt consolidation company to assist him in addressing his delinquent accounts. He also submitted a Loan Rehabilitation form to the Department of Education (DOE) to bring his student loans current. However, before he began making payments on either plan, his wife's employment was impacted by the COVID-19 pandemic. Initially, she received a reduced work schedule. Within a few months, she lost her job. Applicant abandoned the debt consolidation plan when he realized he would be unable to make the proposed monthly payment. He also did not issue payments on his student loans as the loan repayments were paused as part of COVID-19 relief efforts. (AX H, I, K; FORM Response). (See discussion below).

Instead, Applicant made budgetary adjustments and began to contact creditors individually to resolve his delinquent debts. In December 2020, he entered into a payment plan with the creditor for SOR ¶ 1.i. In August 2022, prior to receiving the SOR, he sold his truck to free up funds to pay his delinquent debts. In November and December 2022, he settled the debts reflected in SOR ¶¶ 1.b, 1.f, 1.g and 1.h. He recently signed up for an online budgeting service that includes credit monitoring and debt payoff goals. (AX B-F, J, M, N; FORM Response)

In January 2023, Applicant enrolled in an online personal finance course. He asserted that since he incurred the delinquent debts referenced in the SOR, he has maintained on-time payments on his other accounts and has not experienced any new delinquent debts. (AX O, FORM Response)

SOR ¶¶ 1.a (\$17,247) and 1.c (\$4,205) are Applicant's federal student loans. Following Applicant's January 2020 submission of the DOE Loan Rehabilitation form, payments on federal student loans were paused as part of the March 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The pause included several relief measures for eligible loans such as a suspension of loan payments; a 0% interest rate; and suspension of collection efforts on defaulted loans. See Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/covid-19/>. (AX K).

In August 2022, President Biden announced a plan for the forgiveness of various amounts of federal student loan debt. Litigation regarding the constitutionality of this plan followed, and a decision by the Supreme Court remains pending as of this writing. In December 2022, the DOE emailed Applicant and stated that the pause on the payment of student loans would extend through at least June 2023 and that he would be notified directly when payments were scheduled to restart. (AX A)

Even though payments on federal student loans remain paused by the federal government, in February 2023, Applicant submitted a request that his loans be processed through the DOE Fresh Start Initiative and that an income-driven repayment plan be initiated. He explained that he submitted this application in the event he did not qualify for forgiveness of his student loans by DOE. He has budgeted enough money to resume student loan payments when notified by the DOE. (AX L; FORM Response)

SOR ¶¶ 1.b (\$5,110), 1.g (\$879) and 1.i (\$776) are delinquent credit card accounts that were either charged off or placed in collection. Applicant denied SOR ¶ 1.i because, in December 2020, he initiated payments on the account as part of a settlement agreement. These payments were completed in 2022 and the account was closed. In November and December 2022, he settled and closed the accounts at SOR ¶¶ 1.b and 1.g. (AX B, C, E, J)

SOR ¶ 1.d (\$3,626) is a charged-off personal loan. Applicant stated that he contacted the creditor in 2022 to initiate a payment plan in 2023. He did not provide an update to this account in his FORM Response.

SOR ¶¶ 1.e (\$1,809), 1.f (\$1,368) and 1.h (\$309) are delinquent cellphone and cable bills. In December 2022, Applicant settled SOR ¶¶ 1.f and 1.h. In his Answer, he stated that SOR ¶ 1.e was with a new collection agency and that he was working toward resolving it. (AX D, F; FORM Response)

Applicant began addressing his recent delinquent accounts in 2020, but acknowledged that receipt of the SOR “expedited” his efforts. He asserted that, over the last twenty years, he has either held a security clearance or undergone successful background investigations. Over that time, he has not had any disciplinary or security violations. (FORM Response)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

The adjudicative guideline notes two conditions that could raise security concerns under AG ¶ 19 and are potentially applicable in this case:

- (a) inability to satisfy debts; and

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

Beginning in 2018, Applicant experienced significant financial difficulties. The delinquent debts in the SOR, including federal student loans, multiple credit cards, a personal loan and multiple cellphone and cable bills, are established by Applicant's

admissions and the credit reports in the record. The above disqualifying conditions apply.

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013)

The Appeal Board has also stated that 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).

There are four pertinent conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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.

In 2018, fearing the end of his employment contract, Applicant changed jobs and took a salary reduction that caused financial stress. In January 2020, he attempted to recover from those circumstances by contacting a debt consolidation company and submitting a DOE Loan Rehabilitation form to bring his student loans into good standing. However, those efforts were hindered when his wife lost her job because of COVID-19 related shutdowns. These events were largely beyond Applicant's control.

Still, by the end of 2020, Applicant began addressing his delinquent debts. He has since settled and paid five of his accounts. He has also made efforts to address his federal student loans. Although he remains hopeful for some form of federal student loan forgiveness, he also submitted a DOE application to initiate an income-driven repayment plan once the pause on student loans is lifted. Applicant sold his truck to maintain sufficient funds to initiate payments on his student loans once applicable. He also recently signed up for an online budgeting service that includes credit monitoring and debt payoff goals.

Applicant's financial issues occurred under circumstances that are unlikely to recur, and they no longer cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies. He has issued payment on multiple debts and established a plan to address the remaining delinquencies. Additionally, he is prepared to issue payments on his student loans once directed to by DOE. Applicant has established a "meaningful track record" of debt re-payment. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). AG ¶¶ 20(b) and (d) also apply.

Applicant recently signed up for an online budgeting service that included credit monitoring and debt payoff goals. He also enrolled in an online personal finance course. He has a responsible plan in place for when he is required to address his federal student loans. AG ¶ 20(c) is also applicable.

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.

Applicant has been consistently employed over the last twenty years and previously held security clearances without incident. Beginning in 2018, fearing for his job, he took a new position that came with significant wage loss. In 2020, he began to address his delinquent debts. However, he soon faced additional financial stresses with his wife's job loss following COVID-19 related shutdowns.

Since then, Applicant has paid and resolved several of his delinquent debts and established a plan to pay the remainder. He has submitted applications with DOE for either loan rehabilitation or the initiation of an income-driven repayment plan. He has budgeted money to pay his student loans once directed by DOE.

When compared to his long career, Applicant has shown that his recent financial concerns are an anomaly. In review of the record evidence as a whole, I find that he has mitigated the financial considerations security concerns. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to classified information.

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.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Bryan J. Olmos
Administrative Judge