



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



In the matter of:)	
)	
)	ISCR Case No. 21-02416
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Catie E. Young, Esq.

05/31/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 7, 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 on February 4, 2022 (Answer), and he requested a hearing before an administrative judge. The case was assigned to an administrative judge on April 7, 2022, and then reassigned to me on November 3, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 15, 2022, scheduling the matter for a video teleconference hearing on December 8, 2022. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through X, without objection. Applicant testified and he did not call any witnesses. At Applicant's request, I kept the record open until January 5, 2023, for him to submit additional documentation. By that date, he submitted additional documentation that I marked as AE Y through DD and admitted in evidence without objection. DOHA received the hearing transcript on December 16, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.i and denied SOR ¶ 1.j. He is 49 years old. He married in 1993 and divorced in 1996. He has a 26-year-old daughter. He enlisted in the U.S. military in 1991 after graduating from high school, and he was honorably discharged in 1994. He earned a bachelor's degree in information systems management in 2007 and a master's degree in 2016. He has also earned numerous certifications. (Answer; Tr. at 5-6, 15-24, 26-30, 60; GE 1; AE P-T)

From approximately 2009 to October 2020, Applicant worked as a 1099 employee for various DOD contractors primarily overseas. He was twice unemployed, from April 2015 to October 2015 and from July 2016 to June 2017. As of the date of the hearing and since October 2020, he has worked as a lab manager for his employer, also a DOD contractor, as a W-2 employee. He was first granted a security clearance in approximately 1992. (Answer; Tr. at 5-6, 15-24, 26-30, 59-60, 63, 69-71, 77-81; GE 1; AE P-T)

The SOR alleged that Applicant had four delinquent student loans totaling approximately \$84,221 (SOR ¶¶ 1.a-1.b, 1.g, 1.i) and six delinquent consumer debts totaling approximately \$129,849 (SOR ¶¶ 1.c-1.f, 1.h, 1.j). The SOR allegations are established by Applicant's admissions in his Answer; his March 2021 security clearance application (SCA); his June 2021 background interview; and three credit bureau reports from 2021 and 2022. (Answer; GE 1-5)

Applicant attributed his financial difficulties primarily to his periods of unemployment. When he became re-employed in October 2015 after his first period of unemployment, his annual income was reduced from \$325,000 to \$160,000. He also cited to his father's significant and costly health issues in 2016, for which he assisted financially. He also financially contributed to his daughter's expenses, to include her educational costs. He acknowledged that he financially contributed approximately \$100,000 between 2009 and 2014 to his then-girlfriend. He began to tackle his financial delinquencies, which included several debts that were not alleged in the SOR, once he secured employment in June 2017. He hired an attorney in April 2019 to assist him. He noted that the COVID-19 pandemic delayed his attempts with his creditors to resolve his debts. (Answer; Tr. at 25-31, 35-36, 39-40, 46-47, 56, 58, 70-77, 86-92, 102-103, 115-131; GE 1; AE H, S, BB, DD)

Applicant's four student loans are as follows: SOR ¶¶ 1.a and 1.b are two private student loans with the same creditor charged off for a total of \$16,358; SOR ¶ 1.g is a \$53,875 charged-off student loan; and SOR ¶ 1.i is a \$13,983 student loan account in collection. Applicant obtained the loans in SOR ¶¶ 1.a and 1.b in 2005 to pay for his

undergraduate education, and he obtained the loans in SOR ¶¶ 1.g and 1.i in 2008 and 2016, respectively, to pay for his graduate education. He stated that he timely paid SOR ¶¶ 1.a and 1.b until his first period of unemployment in 2015. In 2016, he applied for deferment for SOR ¶ 1.g but was unsuccessful because the loan had been returned to the lender due to non-payment. He thought he brought all his student loans current in 2017, to include entering a \$500 monthly payment plan for SOR ¶ 1.i, but he learned in 2019 that SOR ¶¶ 1.a and 1.b were not included in his student loan repayment plan. He paid SOR ¶ 1.i, in accordance with his payment plan, in June 2019. He stated that the creditor for SOR ¶¶ 1.a and 1.b was unwilling to work with him when he contacted it in 2019, and then the COVID-19 pandemic hampered his ability to work with the creditor to resolve these loans. In August 2022, he wrote a letter to the three major credit bureaus to verify SOR ¶¶ 1.a, 1.b, and 1.g but stated that he had not received a response. His attorney was assisting him with resolving SOR ¶ 1.g. He intends to establish a repayment plan to resolve them. (Answer; Tr. at 26-37, 43-47, 51-58, 90-92, 94-101, 107, 112; GE 1-4; AE A, B, I, J, X, DD)

Five of Applicant's six delinquent consumer debts are credit cards: SOR ¶ 1.c is a \$23,689 credit card in collection, and SOR ¶¶ 1.d, 1.e, 1.f, and 1.h are credit cards charged off in the amounts of \$21,838, \$26,441, \$28,954, and \$21,167, respectively. Applicant used these credit cards for living expenses while working overseas in approximately 2014 to 2016. As a 1099 employee, he would use his credit cards for four-to-six-month periods while he was not being paid, and he then would pay his credit card balances once he was paid. His periods of unemployment affected his ability to repay his credit cards. He also acknowledged that he used his credit cards to provide his then-girlfriend with financial assistance, as previously discussed. (Answer; Tr. at 37-51, 55-56, 89-92, 101-112; GE 1-4; AE C, D, E, F, J, CC)

Applicant maintained that SOR ¶¶ 1.c and 1.h were duplicate accounts. He stated that when he contacted the credit card company underlying both debts in approximately 2017, the company told him that the debt was purchased by a third-party collection agency. The credit reports list both debts with different account numbers aside from the last four digits, which are identical. SOR ¶ 1.c is reported on all the credit reports. Although SOR ¶ 1.h is reported with a zero balance on the latest credit reports from October 2021 and November 2022, it remains listed as a \$21,167 charged-off account. He stated that his attorney was assisting him with resolving this debt, and he sent a letter to the collection agency in approximately April 2022 directing all communication to his attorney. He intends to resolve this debt once he has verified it. (Answer; Tr. at 37-41, 43-46, 48-49, 55-56, 89-92, 101-110; GE 1-4; AE C, J, CC)

Applicant stated that he contacted the creditors for SOR ¶¶ 1.d, 1.e, and 1.f in approximately 2017 to 2019, and the creditors were unwilling to work with him on a payment plan. He stated that his attorney was assisting him with resolving SOR ¶¶ 1.e and 1.f, and he wrote a letter in August 2022 to the three major credit bureaus to verify them. In November 2022, he was exploring with his attorney options for settling SOR ¶ 1.f. The November 2022 credit bureau reports reflect that SOR ¶ 1.d is paid. (Answer; Tr. at 41-51, 90-92, 110-112; GE 1-4; AE D, E, F, J)

SOR ¶ 1.j is a \$7,760 insurance account in collection. Applicant was unaware of this debt. At his attorney's advice, he contacted the creditor to validate this debt. He stated that after doing so, the debt was removed from his credit report. He believed this debt was associated with SOR ¶ 1.i because he stated that they were both removed from his credit report around the same time. (Answer; Tr. at 58-59, 92-94, 126; GE 1, 2; AE Z, AA)

As of the date of the hearing, Applicant's annual income was \$150,000. His monthly net income was approximately \$9,415 and his monthly net remainder, after \$5,063 in expenses, was approximately \$2,500. He had \$86,000 in his savings account, and he expected a federal income tax refund of \$15,376 for tax year 2021. He does not have any other delinquent debts. His November 2022 credit bureau report reflects a fair credit score. He received online credit counseling in 2022 and he developed a budget. He intends to resolve his delinquent debts. He traveled for tourism in 2014 to India, Thailand, and the Philippines; in 2015 to the Philippines; in 2018 to the UAE; and in 2022 to Paris. (Answer; Tr. at 37, 59-68, 78-86, 112-115, 127-131; GE 1; AE J, K, L, M, N, O, U, W, Y)

Five individuals attested to Applicant's trustworthiness, reliability, and judgment. In January 2022, Applicant's supervisor of one year praised Applicant's performance and dedication to the mission. Another individual, a technical lead for the same company who worked extensively with Applicant daily since 2020, noted Applicant's exemplary professionalism for which he received an award in 2021. Two individuals, one who was Applicant's colleague and supervisor between approximately 2009 and 2013 and the other who was Applicant's immediate supervisor from approximately 2017 to 2020, highlighted Applicant's skills, patience, and ability to work under pressure. Applicant also received a star performer certificate between approximately 2020 and 2022. (Answer; Tr. at 23-25; AE P, V)

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;
- (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's periods of unemployment, his decrease in pay when he was re-employed in 2015, and his father's health issues are conditions beyond his control that 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. Applicant paid SOR ¶¶ 1.d and 1.i, and I find those allegations in Applicant's favor.

Applicant has neither established a plan to resolve his remaining outstanding debts nor taken significant actions to implement a plan. Since unsuccessfully applying for a deferment of his student loan in SOR ¶ 1.g in 2016 and learning in 2019 that his student loans in SOR ¶¶ 1.a and 1.b were not included in his student loan repayment plan, Applicant has made little effort to resolve these three outstanding student loans. He stated that he contacted the creditor for SOR ¶¶ 1.a and 1.b in 2019 and unsuccessfully attempted to negotiate a payment plan, and then the COVID-19 pandemic hampered his ability to work with the creditor to resolve these loans. His next and last efforts came in August 2022, when he wrote a letter to the credit bureaus to simply verify SOR ¶¶ 1.a, 1.b, and 1.g.

Applicant has not provided documentation to corroborate his claims that SOR ¶¶ 1.c and 1.h are duplicate accounts, or that SOR ¶ 1.j is associated with SOR ¶ 1.i. All four of these debts are reported with different account numbers on the credit reports. Even if

I were to find that SOR ¶¶ 1.c and 1.h are duplicates, he has not made efforts to resolve it or his remaining two credit card debts in SOR ¶¶ 1.e and 1.f. He has also not made any effort to resolve SOR ¶ 1.j, other than simply letting it fall off his credit report. He stated that he contacted the creditors for SOR ¶¶ 1.c, 1.e, 1.f, and 1.h between 2017 and 2019 but was unable to negotiate payment plans. He also stated that his attorney was assisting him with resolving these debts. Other than sending a letter in April 2022 to the creditor for SOR ¶ 1.c directing all communication to his attorney, and a letter in August 2022 to the three major credit bureaus to simply verify SOR ¶¶ 1.e and 1.f, he has not made efforts to address these outstanding debts. There is no evidence in the record about whether his payments for his outstanding student loans are paused under the COVID-19 relief for federal student loans. While he received financial counseling and he has the means to resolve his remaining debts, he has not done so. I find that Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not 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 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. I also considered Applicant's honorable military service and his favorable character evidence. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not 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:

AGAINST APPLICANT

Subparagraphs 1.a - 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge