



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



In the matter of:)
)
) ISCR Case No. 22-01354
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2023

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 August 2, 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 on October 8, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 19, 2023.

The hearing was convened as scheduled on May 23, 2023. Government Exhibits (GE) 1, 2, and 3 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through F, which were admitted without objection.

Findings of Fact

Applicant is a 60-year-old employee of a defense contractor. He has worked for his current employer since October 2020. He served on active duty in the U.S. military

from 1980 until he was honorably discharged in 1986. He earned an associate degree in 2012. He is married with three adult children. (Tr. at 22, 47; GE 1)

The SOR alleges 11 delinquent debts totaling about \$33,000. The debts are listed on an August 2021 credit report, a November 2022 credit report, or both credit reports. Most of the debts were opened from 2015 through 2018 and became delinquent between 2017 and 2019. (Tr. at 26, 28; Applicant's response to SOR; GE 1-3)

Applicant attributed his financial difficulties primarily to his and his wife's medical problems, which were compounded by employment issues. His wife developed cancer in about 2009, their medical insurance did not cover all the bills, and she was out of work for about six to eight months. In about 2017, she had surgery, and she was out of work for at least a month. In about 2021 or 2022, she had an organ transplant, and she was out of work for about two months. She also has a sporadic work history due to working for non-profits that had funding issues. He had surgery in about 2022, which caused him to be out of work for about three weeks. He lost a job he held for around 35 years in about September 2020, and was unemployed for two to three weeks before he obtained his current job. He believes the COVID-19 pandemic led to the company letting him go. He earned about \$17.50 an hour at his previous job, and about \$15 an hour at his current job. (Tr. at 14-17, 20, 22-27, 43, 46; Applicant's response to SOR)

Applicant started addressing his delinquent debts in about 2020. The August 2021 credit report lists four collection accounts that were paid or settled in 2020 or 2021. He also settled a debt for \$292, with the last payment in August 2021. Those five debts, which totaled about \$1,800, were not alleged in the SOR because they were resolved before the SOR was issued. (Tr. at 41; GE 1-3; AE A, B)

Applicant settled the debt alleged in SOR ¶ 1.f before the SOR was issued, with the final payment of \$372 in January 2022. The August 2021 credit report listed the balance of the debt as \$1,060. The SOR alleged the debt as \$688. It is unclear where that amount came from, possibly another credit report that was not offered in evidence. The November 2022 credit report lists the balance as \$0. (Tr. at 33; GE 2, 3; Applicant's response to SOR; AE D)

Applicant and the collection company for the \$428 debt alleged in SOR ¶ 1.i agreed to resolve the debt through six monthly payments of \$68, starting in January 2023. Applicant documented that he made the first four payments. The last two payments were not due as of the date of the hearing. (Tr. at 34; Applicant's response to SOR; GE 2, 3; AE C)

SOR ¶¶ 1.g and 1.h allege \$663 and \$526 debts to the same collection company for the same bank. He settled and paid the \$663 debt in April 2023. He settled and paid the \$526 debt in May 2023. (Tr. at 12-13, 33-34; Applicant's response to SOR; GE 2, 3; AE E, F)

SOR ¶ 1.d alleges a \$3,180 charged-off credit card account. Applicant has accounts with the bank that issued the credit card. He and the bank are in the process of setting up a payment plan in which the bank will automatically deduct an amount each month from his savings or checking account until the debt is revolved. (Tr. at 32; Applicant's response to SOR; GE 1-3)

Applicant borrowed about \$14,500 from his 401(k) retirement account with his previous employer. When he was laid off, he was unable to pay back the loan, and it was treated by the IRS as a distribution from his retirement account, which created tax consequences in tax year 2021. He paid about \$1,100 to resolve the state tax debt. For about the last year, he has been paying the IRS around \$189 per month on a tax debt that was originally about \$4,000. (Tr. at 17-20, 42; Applicant's response to SOR)

There are another six SOR debts totaling about \$27,600 that have not been addressed. Applicant's finances are not perfect, but they have improved. His wife is currently working full time, and he is starting to get overtime hours. He is a disabled veteran and receives about \$1,100 a month from the Department of Veterans Affairs. He worked to resolve his smaller debts first, in the hope that he could then secure a loan to pay or settle all of them. He credibly testified that he planned to continue that course until all the delinquent debts and taxes are paid, either collectively through a loan, or individually one at a time. (Tr. at 15, 21-24, 27-44, 46; Applicant's response to SOR; GE 1-3)

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 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were primarily related to his and his wife's medical problems and their employment issues. He started addressing his delinquent debts in about 2020, well before the SOR was issued. He resolved five non-SOR debts, which totaled about \$1,800, before the SOR was issued, and he resolved a \$1,060 debt (alleged in SOR ¶ 1.f as \$688), in January 2022, before the SOR was issued. He resolved the \$663 and \$526 debts alleged in SOR ¶¶ 1.g and 1.h in April and May 2023. He completed four of the six \$68 monthly payments to resolve the \$428 debt alleged in SOR ¶ 1.i. He paid his state taxes, and he has been paying his installment agreement with the IRS for about a year. He credibly testified that he planned to continue to pay all his delinquent debts and taxes, either collectively through a loan, or individually one at a time.

Applicant does not present a perfect case in mitigation, 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 still has debts to resolve, but I believe he is honest and sincere in his intentions to address his debts. I find 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. It may take time, but I am convinced he will eventually resolve his financial problems. See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): “Depending on the facts of a given case, the fact that an applicant’s debts will not be paid off for a long time, in and of itself, may be of limited security concern.” The above mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

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 honorable military service.

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

¹ Appendix C of the adjudicative guidelines gives 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.

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.k:	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