



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



In the matter of:)	
)	
)	ISCR Case No. 22-00864
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2023

Decision

PRICE, Eric C., 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) in June 2020. On May 17, 2022, the Department of Defense Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR (Answer) on May 21, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. On May 19, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on

June 29, 2023. The Government's exhibit list and pre-hearing disclosure letter are marked as Hearing Exhibits (HE) I and II. Department Counsel offered seven exhibits marked as Government Exhibits (GE) 1 through 7. Applicant testified but offered no documentary evidence. The record was held open until July 13, 2023, to permit Applicant to submit documents. He timely submitted Applicant's Exhibits (AE) A through G. I sustained Applicant's objection to GE 5 (summary report of his interview with a government investigator), and there were no other objections to the proffered exhibits. GE 1 through 4, GE 6 and 7, and AE A through G are admitted in evidence. DOHA received the hearing transcript (Tr.) on July 13, 2023.

Findings of Fact

The SOR alleges five delinquent debts totaling approximately \$50,002, including delinquent student-loans totaling \$42,262 (SOR ¶¶ 1.a-1.b), credit accounts charged off for \$7,287 (SOR ¶¶ 1.c-1.d), and one credit account in collection for \$453 (SOR ¶ 1.e) In Applicant's Answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.d, with explanation. His admissions are incorporated in my findings of fact.

Applicant is a 41-year-old system administrator employed by a defense contractor since April 2016. He worked in information technology (IT) for two other companies from February 2012 to April 2016, and as a logistics technician from May 2011 to January 2012. Prior to May 2012, he worked as a seasonal laborer. He was unemployed from January 2012 to February 2012, and from October 2009 to May 2010. He held a security clearance in 2013. (GE 1; Tr. 11, 29-33)

Applicant attended a technical institute from December 2009 to September 2011 and earned an associate degree. He married in July 2006 and has four children, ages 21, 16, 14, and 12. (GE 1; AE A-B; Tr. 32-34, 39)

Applicant attributes his financial problems to the cost of maintaining a family of six, his unemployment and underemployment, his wife's unemployment, health, and underemployment. (Answer; GE 1 at 43-55; Tr. 29-30, 39-43, 48, 51-52, 61-62) He prioritized debts and focused on paying his mortgage, car loan, and utilities. (Tr. 39-40)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶¶ 1.a-1.b: student loans placed for collection of \$42,262. Applicant admitted each allegation explaining that the student loans were in forbearance under COVID-19 relief measures. (Answer; Tr. 25) He disclosed the delinquent loans in his June 2020 SCA. (GE 1 at 44-45, 54) He testified that he incurred the loans while attending a technical school and made required payments until about 2012. After he fell behind on payments due to underemployment, his forbearance request was granted. He learned that his student loans might be forgiven in about 2009 and joined a class action lawsuit against the school in 2015. (Tr. 34-38; AE B) He adopted a "wait and see" approach regarding payments on the loans because of the lawsuit, pending action by the Department of Education, and because his income was not sufficient to pay his student

loans and household bills. (Tr. 37-41) He paid off one of the smaller student loans and received a small payment from the class action lawsuit. (Tr. 38, 41)

In August 2022, the Department of Education announced that it would discharge student loans received to attend the school. (GE 7) Applicant submitted evidence that his student loans were discharged in November 2022, because of misconduct and misrepresentations by the school. (AE A; Tr. 34-41, 67-68) These debts are resolved.

SOR ¶ 1.c: home improvement loan charged off for \$5,050. Applicant denied the allegation in his Answer, noting that he had agreed to a payment plan and had made payments that reduced the balance to \$4,147. He submitted evidence of payments totaling about \$1,688 from October 2021 to March 2022. (Answer) He testified that he entered a payment plan in 2020 or 2021, that he made regular payments that reduced the balance to about \$2,589, and that he would continue making payments until the debt was paid. (Tr. 41-44, 68-69) He submitted evidence of additional payments totaling \$900 from January 2023 to June 2023. (AE C) Credit reports show the loan was charged off for \$7,485, that the balance was \$5,050 in January 2022, and that as of June 23, 2023, the balance was \$2,589. (GE 3 at 2, GE 2 at 4) This debt is being resolved.

SOR ¶ 1.d: loan charged off for \$2,237. Applicant denied the allegation, submitted evidence that he had agreed to a payment plan, and noted that his payments had reduced the balance to \$1,637. (Answer) He reported the debt and payment plan in his June 2020 SCA. (GE 1 at 52-53) He testified that he had been making monthly payments of \$100 since 2019, that he had reduced the balance to \$437, and would continue making payments until the debt was paid. (Tr. 21, 45-46) He submitted evidence of payments totaling \$1,465 from January to June 2023. (AE C) Credit reports show the loan was charged off for \$3,596, that the balance was \$2,237 in January 2022, and that as of June 23, 2023, the balance was \$437. (GE 3 at 3, GE 2 at 8) This debt is being resolved.

SOR ¶ 1.e: credit card placed for collection of \$453. Applicant admitted the allegation in his Answer, noting that he was working with the creditor to settle the remaining balance. He reported the debt in his June 2020 SCA. (GE 1 at 50-51) He testified that the debt remained outstanding, that he intended to pay it off, and that the creditor rejected his February 2023 settlement offer. (Tr. 46-47) Credit reports reflect the account was in collection for \$454 in July 2020 and for \$453 in January 2022. (GE 4 at 14, GE 3 at 3) This debt is not resolved.

In his June 2020 SCA, Applicant disclosed approximately \$62,000 of delinquent debt including the debts alleged in the SOR, and delinquent debts not alleged in the SOR (Non-SOR) totaling about \$8,200. (GE 1 at 43-55) He earned \$45,000 to \$55,000 annually from July 2013 to April 2016, and his gross annual salary increased from \$55,000 in 2016 to \$108,000 in 2023. (Tr. 31-32)

Applicant's credit report dated June 23, 2023, reflects two delinquent Non-SOR debts including a past-due mortgage, and a telecommunications account in collection for

\$926. (GE 2 at 4-5, 7-8) He submitted evidence that mortgage payments he had timely submitted in June 2023 totaling \$2,994 were not reflected in his June 2023 credit report. (GE 2 at 5; AE F) He testified that the telecommunications debt resulted from a change in providers, that his previous provider refused to accept phones in return, and that he intended to settle the debt. (Tr. 49) He provided a budget but has not received financial counseling. (AE G; Tr. 71)

I found Applicant's responses and demeanor at the hearing to be credible and consistent with his SCA, Answer and someone who was reliably telling the truth. After reviewing the entire record, I find that his hearing testimony is corroborated by documentary evidence submitted by the government and his own exhibits. He credibly responded to all questions and was keenly aware of the significance of resolving his debts and establishing his financial responsibility.

Policies

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 as to potential, rather than actual, risk of compromise of classified information.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt "will be resolved in favor of the national security." 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

The security concern under this guideline 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. 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.

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions and record evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following mitigating conditions 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; and

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

AG ¶ 20(a) is established for the student loans alleged in SOR ¶¶ 1.a and 1.b. Those debts are resolved, occurred under circumstances making recurrence unlikely, and do not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not fully established. Applicant's and his wife's periods of unemployment and underemployment were largely beyond their control. One component of acting responsibly is maintenance of contact with creditors. Although he has acted responsibly by prioritizing and paying some of his delinquent debts, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) is not fully established because Applicant has not received financial counselling.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c and 1.d. Applicant negotiated payment agreements for these debts before the SOR was issued, made payments in accordance with those agreements, and has substantially reduced the balances due. Although the \$453 debt alleged in SOR ¶ 1.e is unresolved, Applicant plans to resolve it in the near future. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered the entire record including Applicant's education and work history. I also considered that his financial problems were caused, in part, by circumstances beyond his control including unemployment, underemployment, health issues, and responsibilities related to support of a large family.

Applicant was candid, sincere, and credible at the hearing. He has a logical and appropriate plan for resolving the remaining SOR debts, and there are clear indications that his financial problems are being resolved and are under control. His income has significantly increased, and he understands the security implications of delinquent debt.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that [he] act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant understands what he needs to do to maintain his financial responsibility.

A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised under Guideline F, financial considerations, are mitigated.

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.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric C. Price
Administrative Judge