



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



In the matter of:)
)
) ISCR Case No. 19-02450
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant and his wife incurred delinquent debts during their marriage. He assumed sole responsibility for the debts. His ability to address them was hampered by a limited income. He improved his employment marketability by changing career fields. He now has increased income and has reduced expenses, and he is in better position to address his debts responsibly as his financial stability has improved. His debts are being settled and resolved. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 6, 2018. On January 25, 2022, the Defense Counterintelligence and Security Agency 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR allegations in an undated SOR Response. He initially requested an administrative determination, but on or about May 25, 2022, he requested a hearing before an administrative judge. (Tr. 4) The case was assigned to me on April 18, 2023.

On May 4, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 22, 2023, by video teleconference through an online platform. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5, all of which were admitted without objection. Applicant testified but did not offer any exhibits. I held the post-hearing record open to allow him the opportunity to submit additional information. He timely submitted six documents, which are marked as Applicant's Exhibits (AE) A through F and admitted without objection. A June 4, 2023 e-mail from Applicant is marked as AE G. They are identified in the Facts section, below. DOHA received the hearing transcript (Tr.) on June 5, 2023, and the record closed on June 13, 2023.

Applicant's Exhibit E is an Excel spreadsheet entitled, "Personal Monthly Budget." On the printed copy of AE E, the font is not large enough to read the data. However, the copy that Applicant sent by e-mail is legible, and I have reviewed it (with details discussed in the Facts section, below, as needed). In the event it is necessary to provide the emailed copy of AE E for appellate review, I will do so upon request.

Findings of Fact

Applicant admitted all six debts in the SOR (¶¶ 1.a-1.f) with a brief general explanation. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He was married from June 2013 to December 2017, when he and his wife divorced. They have a seven-year-old daughter, born in March 2016. (GE 1; Tr. 26-28) Applicant has some college credits and an Information Technology (IT) certification. He served on active duty in the U.S. Air Force from 2006 to 2016. He deployed to Iraq twice during 2009-2011. He was discharged honorably as a staff sergeant (E-5). (GE 1; Tr. 30) Applicant is considered to be "totally and permanently disabled" by the Department of Veterans Affairs (VA) and his disability is 100% service-connected. He receives \$3,757 a month in compensation. (AE F; Tr. 52-53)

After leaving the Air Force, Applicant worked briefly for an auto dealer and a grocery chain (2016-2017) before joining the defense industry in June 2017. He worked for a large defense contractor from 2018-2020, and was earning \$50,000 annually when he left, after earning his IT certification. When he changed careers and jobs, his starting annual salary at his next job was \$45,000. He remained with that company and its successor until March 2023 (leaving with a salary of \$60,000), when he began working for his current employer and clearance sponsor. His salary is now \$68,500. (GE 1; Tr. 22-26, 52-54)

Applicant disclosed on his SCA that after their daughter was born, his wife left him, and he had to pay all their credit cards and support them while working part time. He noted that he retained a credit counseling firm, has been taking their financial advice, and has been cutting expenses. (GE 1 at 39; Answer)

The SOR debts were incurred jointly during the marriage rather than after the divorce. (Tr. 31-34) Applicant said his former wife declined to assume responsibility for any of them, so he did so when they divorced. (Tr. 51) Applicant testified that he was not making a sufficient income to address his debts and his child support obligations until he joined the IT field. He started at the bottom, has excelled, and is working his way up to leadership. With promotions, he began to attain financial stability and is now better able to address his debts. (Tr, 20-22)

The six SOR debts total about \$19,562. They are established by Applicant's admissions and by credit reports in the record, from March 2018 and March 2019. (GE 3, GE 4) He also discussed them in his April 2018 background interview. (GE 2) None of the SOR debts are reflected on a May 2022 credit report. (GE 5)

SOR ¶ 1.a (\$5,728) is a charged-off credit-card account. (GE 3, GE 4) After the hearing, Applicant provided documentation from the creditor reflecting their agreement to settle the account for \$4,297 by May 2024. He said he is to pay \$367 per month. (AE D; Tr. 37-38, 40-43) This account is being resolved.

SOR ¶ 1.b (\$5,506) is a bank credit-card account that has been charged off. (GE 3, GE 4) After the hearing, Applicant provided documentation from the creditor reflecting that the creditor has agreed to settle the account for \$4,130. Applicant is to make a \$344 payment every month until the account is resolved in April 2024. (AE B; Tr. 35-37, 43-45) This account is being resolved.

SOR ¶ 1.c (\$2,267) is a bank credit-card account that has been charged off. (GE 3, GE 4) After the hearing, Applicant provided documentation from the creditor reflecting that the creditor has agreed to settle the account for \$1,701. Applicant is to make a \$141.75 payment every month until the account is resolved in April 2024. (AE A; Tr. 35-37, 45-46) This account is being resolved.

SOR ¶ 1.d (\$1,393) is a military credit account that has been charged off. (GE 3, GE 4) Applicant said he had not arranged to pay this debt but would do so. (Tr. 39, 46) This debt is not resolved.

SOR ¶ 1.e (\$2,437) is the balance due on an auto loan account after a repossession. (GE 4) Applicant explained that he prioritized paying child support over resolving this debt, which led to the repossession in 2016. (GE 2 at 5-6) Applicant believed that the creditor had told him that they had no record that he owed any money and that they no longer held the debt. (Tr. 38-39, 48-50) After the hearing, he provided documentation from the creditor reflecting that the payoff amount for the loan is \$9,383, effective through June 17, 2023. (AE C) He also indicated in a post-hearing e-mail that he is able to pay \$250 a month to resolve this debt. This account is not resolved.

SOR ¶ 1.f (\$2,231) is a cell phone account placed for collection. (GE 3) Applicant asserted that the debt has been paid and was his former wife's responsibility. (Tr. 35, 50-51)

Applicant has lived in State 1 since his wife left in Summer 2016. She lives with their daughter in another state. (Tr. 34) He has paid child support obligations since then and is current. His child support obligations are \$900 a month, and he expects a reduction to \$600 in October 2023. He said he also provides additional funds of about \$300 or \$400 a month for his daughter. (Tr. 28-29, 56)

Applicant has also cut credit-card expenses and moved in with his mother to cut living expenses further. He pays about \$1,000 in rent. (Answer; Tr. 55, 57) He estimated that he has \$3,000 to \$3,500 in monthly expenses, with an income of about \$7,800 (salary and disability), leaving about \$4,400 in surplus. (Tr. 57-58) He provided a budget after the hearing. (AE F) He has no past-due taxes or late-filed tax returns, and no other delinquent debts. (Tr. 61-63; GE 3, GE 4, GE 5)

Applicant said he understands the magnitude and importance of his debts and intends to pay them. He said he had excellent credit before his divorce and wants to improve his credit and move on with his life and career. (Tr. 39-40) He said he learned that it was important not to let others affect his credit and that "financial literacy with your significant other is another big factor." (Tr. 60-61)

Policies

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

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

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. 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 under AG ¶ 19. The following AGs are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

When Applicant's wife left him after the birth of their child, in mid-2016, he assumed the family debts. They became delinquent when he was unable to address them. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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, or 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 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.

Applicant assumed responsibility for the marital debts, and they became delinquent after he was unable to pay them. He has since improved his employment prospects by earning an IT certification, which has led to a better paying job and increased financial stability. He has also decreased his monthly expenses by moving in with his mother. He has settlement arrangements in place for most of his debts, and now has better ability to address them. Applicant's debts were incurred due to circumstances largely beyond his control. His debts are limited to this circumstance and he is acting responsibly in addressing them. AG ¶¶ 20(b) and 20(d) apply.

AG ¶ 20(a) does not fully apply since his debts are ongoing. However, Applicant has pursued credit counseling and his debts are being resolved and are under control. AG ¶ 20(c) therefore applies.

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(c):

(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 considered Applicant's prior military service and the fact that he is a disabled veteran. I also considered the record evidence supporting a finding that Applicants' debts occurred after his divorce, and he has taken steps to improve his employment marketability and has worked to cut expenses so he can address his debts responsibly. I had the opportunity to observe Applicant's demeanor during the hearing and conclude that he testified credibly about his intentions to continue addressing his debts responsibly now that he is able to do so. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant provided sufficient evidence to mitigate the financial 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.f:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge