



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



In the matter of:)
)
) ISCR Case No. 22-01730
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: Oliver F. Mintz, Esq.

07/26/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 25, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR on November 20, 2022 (Answer). He requested a hearing before an administrative judge. The case was assigned to me on May 3, 2023.

The hearing was convened as scheduled on July 7, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A and B, AE E through J, and AE L without objection. Applicant did not offer the proposed exhibit that I marked for purposes of identification as AE C and withdrew AE K. I received a transcript (Tr.) of the hearing on July 14, 2023.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom he has worked since July 2018. He has been continuously employed by government contractors since June 2011. He has been married since August 2017. He and his wife have an 18-month-old child. He earned a high school diploma. He has held a security clearance since about 2006, without any security incidents. (Tr. 22-24, 30, 62; Answer; GE 1, 6; AE A)

In the SOR, the Government alleged Applicant's failure to timely file his 2018 federal income tax return (SOR ¶ 1.a), and his seven delinquent debts totaling approximately \$117,000 (SOR ¶¶ 1.b through 1.h). The financial delinquencies consist of the following: federal income taxes (SOR ¶¶ 1.b and 1.c); credit cards (SOR ¶¶ 1.d, 1.e, 1.g, and 1.h); and a personal loan (SOR ¶ 1.f). He admitted the SOR allegations in SOR ¶¶ 1.a, 1.d, and 1.f through 1.h, with additional comments. His admissions are adopted as findings of fact. He denied the remainder of the SOR allegations because he claimed to have resolved those debts prior to the issuance of the SOR. However, the SOR allegations are established through his admissions, the Government's credit reports, and Internal Revenue Service (IRS) tax records. (Answer; GE 1-6)

While Applicant failed to timely file his federal income tax return for tax year 2018, he provided sufficient evidence that this failure was largely the fault of his CPA, with whom he has worked since 2009. His CPA attempted to timely file the relevant income tax return, but it was not accepted by the IRS. With the help of his CPA, he has late filed this income tax return. The evidence shows that this failure to timely file his income tax return was a one-off and not a recurring problem with him or his CPA. While a failure to pay his federal income taxes for tax year 2018 is not alleged, he provided evidence that he paid those taxes. (Tr. 27-28, 32-33, 40-42; Answer; GE 1, 5, 6; AE D-G)

In October 2017, Applicant entered a payment arrangement with the IRS to pay his delinquent taxes for tax year 2016. He satisfied these taxes on October 17, 2022. In December 2021, he entered a payment arrangement with the IRS to pay his delinquent taxes for tax year 2020. The IRS acknowledged that he paid his delinquent taxes for tax year 2020 on October 25, 2022. He refinanced the mortgage on his home and used the equity to finish paying those taxes. He no longer owes any federal taxes and received a refund for tax year 2022. He also used the equity from his refinance to pay off \$50,000 in non-delinquent credit-card debt that was not listed in the SOR. (Tr. 42-45, 58, 74-76, 84; Answer; AE D, E, H, I)

In about March 2018, Applicant entered into an agreement with a debt consolidation company (DCC) to get a grip on his finances and to settle his consumer debts. He enrolled the debts in SOR ¶¶ 1.d through 1.h, as well as several other consumer debts not listed in the SOR. He was current on all these accounts prior to hiring DCC but defaulted on them pursuant to his DCC agreement. Pursuant to their agreement, the DCC negotiates settlement agreements with enrolled creditors.

Applicant pays a monthly fee into a DCC account that it uses to make payments to creditors with whom it has made a settlement agreement. The DCC program was initially scheduled to last three years, but because the COVID-19 pandemic slowed negotiations with creditors, it has lasted longer. (Tr. 35-36, 39, 45-56, 76-80; Answer; GE 1-6; AE B, J, K)

Through the DCC program, Applicant has settled the debt in SOR ¶ 1.e and is currently paying the debt in SOR ¶ 1.h. DCC is still negotiating a settlement agreement with the creditors of the debts in SOR ¶¶ 1.d, 1.f, and 1.g, and no payments have been made on these accounts. He has settled four accounts that are not listed in the SOR. Overall, he has paid \$87,000 towards his total enrolled debt of \$154,000. He currently pays about \$1,460 per month into the DCC account, but that amount varies depending upon what debts are being paid at any given time. Applicant's plan is to continue his agreement with DCC until all the enrolled debts are paid. He also placed his home on the market about three months prior to the hearing with the hope of using equity from the sale to pay about \$30,000 to DCC, at which point they will be required to settle his remaining enrolled debts with no further payment from him. He considers his hiring of DCC to represent financial counseling. (Tr. 35-36, 39, 45-56, 68, 76-84; Answer; GE 1-6; AE B, J, K)

Applicant's financial issues began in about 2010 when he took a hiatus from working in Afghanistan, came back to the United States, and was voluntarily unemployed. During this time, he withdrew about \$70,000 from a retirement account to maintain the lifestyle he was living while he was employed. He did not withhold enough money for the taxes he incurred from these withdrawals. He also was not withholding enough money from his wages for income taxes, resulting in owing income tax at the end of several tax years. Judging from his receipt of an income tax refund in 2022, he has fixed that issue. (Tr. 25-33, 58, 61-62; Answer; GE 1, 5, 6; AE A, E, J)

Applicant failed to realize that a creditor stopped his automatic payments on one of his credit cards not alleged in the SOR for three months as emergency relief for Hurricane Harvey in 2017. When he realized he had not made payments for several months, he could not afford to pay the balance and enrolled with DCC. He notified his facility security officer that he had enrolled with DCC and listed his tax and other delinquencies in his December 2020 Electronic Questionnaire for Investigations Processing (SF 86). I observed Applicant while he testified and found him to be credible. His willingness to report potentially derogatory information bolsters this finding. (Tr. 25-34, 62; Answer; GE 1, 5, 6; AE E, J)

Applicant earns \$138,000, annually in wages. His current monthly earnings are nearly subsumed by his monthly expenses. His current mortgage alone is \$3,800 per month. He has about \$5,000 in a checking account. He has depleted almost all his retirement savings with the exception of about \$600. He is hopeful that he will get a promotion at work that will increase his salary to \$145,000, annually. When he left his job in Afghanistan in 2010, he was making over \$200,000, annually. He plans to sell his home for at least the \$550,000 appraisal amount and use the equity to pay more of his debts and increase his budget surplus. Once he sells his home, he can live rent free in

a home that his in-laws own. He plans to save the money he would spend on rent or a mortgage while he lives in his in-law's home. He has a contingent contract with a builder to purchase a home and land for \$825,000. The contingencies are that he sells his current home, and that he makes at least \$145,000 in salary in about a year. He can also unilaterally pull out of the contract. He and his wife have discussed the possibility of canceling the contingency contract and purchasing a less expensive home. He is looking into hiring a certified financial planner to help with his finances. He had one in the past for an unspecified time, but that person retired. He has no financial delinquencies other than those referenced herein, however, he has an additional \$30,000 in non-delinquent credit-card debt that is not listed in the SOR and is not enrolled with DCC. (Tr. 38-40, 58-73, 82; GE 2, 6, 10)

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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

As evidenced by his income tax delinquency as early as 2016, and his other financial delinquencies and need to hire DCC beginning in 2018, Applicant has a history of being unable to pay his debts, including his federal income taxes. The above listed conditions are applicable, thereby shifting the burden to Applicant to provide evidence in mitigation.

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's failure to timely file his federal income tax return for the 2018 tax year was a one-time occurrence arguably caused by his CPA that has since been remedied. I find that allegation mitigated under AG ¶ 20(a), AG ¶ 20(b), and AG ¶ 20(g).

While caused by his own errors that were not largely beyond his control, Applicant paid his delinquent federal taxes prior to the issuance of the SOR. He owes no federal taxes. He received an income tax refund for tax year 2022, so he appears to have remedied the issue he had with not withholding sufficient taxes from his wages. I find that his delinquent federal taxes are mitigated under AG ¶ 20(d) and AG ¶ 20(g).

All but one of the remaining SOR debts are unresolved. Applicant's income barely exceeds his expenses. Despite paying off a significant amount of past-due debt, he still has about \$30,000 in non-delinquent credit-card debt. He entered into a contingent contract to purchase a home that will significantly increase his debt. This contract is contingent upon him selling his home and making more money, and he has testified that he can (and might) cancel the contract unilaterally. I am hopeful that he makes a fiscally responsible decision regarding this contract, however, given his current income and expenses and outstanding delinquent debt, his financial problems are ongoing. AG ¶ 20(a) does not apply to his remaining SOR debts.

Applicant's remaining SOR debts were caused by spending beyond his means, not properly monitoring his debts, and voluntarily defaulting as advised by DCC. These causes were not largely beyond his control. AG ¶ 20(b) does not apply to those debts. While DCC is assisting him with addressing his consumer debts by negotiating settlements and distributing payments, he has provided insufficient evidence to show that these services constitute "financial counseling." AG ¶ 20(c) does not apply to his remaining SOR debts.

In 2018, Applicant engaged DCC to assist him with resolving his consumer delinquencies. For over five years, he has consistently made the required payments to DCC. While he has only resolved one of the consumer debts in the SOR through this program, he has resolved four other consumer debts not listed in the SOR. He has paid about 60 percent of his remaining, delinquent debts. He credibly testified that he will continue to make the required payments until the remainder of his debts are resolved. He is also attempting to sell his house to use the equity to make a lump-sum payment to DCC to insure that he meets their requirements to have the debts resolved with no recurring payments. While DCC's progress has been slow, I do not find that fact sufficiently detracts from his ability to show that his effort is made in good faith. AG ¶ 20(d) applies to the remaining SOR debts.

A meaningful track record of debt reform includes evidence that debts have been paid off or resolved. An applicant is not required to show that every debt in the SOR has been paid, and there is no requirement that a plan provide for payments on all outstanding debts simultaneously. ISCR Case No. 14-00504 at 2 (App. Bd. Aug. 4, 2014). Rather, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." There is also no requirement that the first debts paid in furtherance of a reasonable debt plan are the SOR debts. ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). Guideline F mitigation does not require the payment of all the SOR debts. Instead, it requires that Applicant remove trustworthiness and reliability concerns raised by those debts. ISCR Case No. 14-00504 at 3.

Applicant's DCC arrangement, his refinancing of his mortgage to pay indebtedness, his viable plan to sell his home to pay indebtedness, and his viable plan to live rent and mortgage free to save money demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. While an affirmative commitment to cancel the contingency contract would have been preferable, his credible testimony that he may cancel it helps resolve any doubts about his judgment, trustworthiness, and reliability.

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 must 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.

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.

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.h:	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.

Benjamin R. Dorsey
Administrative Judge