



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



| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 22-00821 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Patricia A. Long, Esq.

10/016/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On June 29, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 14, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on April 16, 2023. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 9. Applicant provided a response on June 1, 2023. He objected to Item 6, (a summary of Applicant's subject interview with a government investigator) and Item 9 (Lexis records) based on authentication. The objection to Item 6 is sustained. The objection to Item 9 is overruled. Items 1 through 5 and 7 through 9 are admitted in evidence. Applicant provided documents that were labeled Applicant's Exhibits (AE) 1 through 11. There were no objections and they are admitted in evidence. The case was assigned to me on July 31, 2023.

Findings of Fact

Applicant denied all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He earned a bachelor's degree in 1993. He served in the Army National Guard from 1984 until he was honorably discharged in 1999. He married in 2001 and has children ages 21, 18, 14, and 11.

Applicant worked for a federal contractor from April 2004 to December 2014. In January 2015, he accepted a transfer due to his employer having funding issues. He took a significant reduction in pay to maintain employment. His family did not move with him. He held the position until July 2015. From January to 2015 to August 2015, he was supporting two households. He was paying the mortgage on his primary home, the mortgage on rental property they owned, and rent where he was living. During this period, his tenants left, and Applicant was no longer receiving rental income. He and his wife began using credit cards and the balances became unmanageable. (Items 3, 4, 5)

From 2017 to 2019, Applicant began accumulating debt, and in 2018 he began missing payments. In 2019, he was proactive about resolving his debts. He established payment plans, a budget, and participated in financial counseling. (Items 7, 8, 9)

Applicant also attributed his financial problems to the COVID-19 pandemic. He was hospitalized with the virus. His in-laws lived with their family from 2010 until 2022. His father-in-law also contracted the virus and was hospitalized in 2020. He passed away in the hospital in 2021. His daughter was diagnosed with bipolar disorder and her medical treatment was several hours away. It took numerous medical and hospital visits before she was properly diagnosed in 2020. In addition, his wife was laid off from her job. Applicant was also diagnosed with blood cancer upon his return from his military service in Iraq. His medical condition is debilitating and impacts his daily life. (Item 3, AE 1, 3, 4)

The SOR alleges seven delinquent credit card or consumer accounts totaling approximately \$87,832. It also alleges a foreclosed mortgage on a timeshare with a remaining balance of \$56,375. Finally, it alleges he is indebted to the federal government for delinquent taxes in the amount of approximately \$5,000 for tax year 2018.

SOR ¶ 1.a is the alleged tax debt. In January 2022, Applicant responded to government interrogatories, and he disclosed that that he owed income taxes for tax year 2018. In his answer to the SOR, he disputed that he owed a tax debt. He provided a copy of his 2018 tax transcripts, which shows a zero-balance owed. A refund from tax year 2018 was applied to a 2017 tax debt, and he received the balance of the refund. He also provided copies of his 2019 and 2020 tax transcripts that shows he owes 15 cents and \$1.82, respectively. It is noted that according to the transcripts, he failed to timely file his tax returns for both years. He filed his 2019 and his 2020 income tax returns in August 2022, after receiving the SOR. His failure to timely file his income tax returns was not alleged in the SOR. (Item 3-Exhibit 12; AE 4)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when applying the mitigating conditions, in making a credibility determination, and in a whole-person analysis.

In July 2019, Applicant enrolled in a debt solution program (GH), which provided financial counseling and worked with him to establish a budget. He began making payments to GH in August 2019. In December 2019, he enrolled in another credit assistance program (CAN), which provided him additional financial counseling and assistance in paying off his debts. (Item 4-enclosures 7, 8, 9)

SOR ¶ 1.b (\$19,021) is a judgment filed in 2020 for a credit-card debt. Applicant made payment arrangements with the creditor in early 2019 and was making payments through GH. He made the payments until the debt was paid in full in December 2020, and the debt is resolved. (Item 4-enclosure 13)

SOR ¶ 1.c (\$4,931) is a charged-off credit card. Applicant settled and paid the agreed upon amount of \$1,900 in November 2020. The debt is resolved. (Item 4-enclosure 14)

SOR ¶ 1.d (\$33,598) is a charged-off debt. A consent judgment was filed by both parties and a payoff settlement with the creditor for \$16,800 was accepted in March 2022. Applicant made monthly payments of \$467 and paid the remaining settlement balance in May 2023. The debt is resolved. (Item 4-enclosure 15; AE 5)

SOR ¶ 1.e (\$1,215) is a charged-off credit card. Through DAN, Applicant reached a settlement agreement with the creditor in August 2022 and paid the agreed upon amount (\$642). The debt is resolved. (Item 4-enclosure 16)

SOR ¶ 1.f (\$25,130) is a charged-off account. Applicant reached a joint settlement agreement with the creditor in March 2021 agreeing to a payoff balance of \$15,000. Applicant made consistent monthly payments until August 2022 and made a final payment in March 2022 of \$12,250 to satisfy the debt. The debt is resolved. (Item 4-enclosure 17, 18; AE 8)

SOR ¶ 1.g (\$2,333) is a charged-off account. Applicant settled and paid the debt in June 2022 for \$1,155. The debt is resolved. (Item 4-enclosure 19)

SOR ¶ 1.h (\$1,604) is a charged-off account. GH negotiated a settlement agreement. Applicant completed the terms of the payment agreement in August 2022 and resolved the debt. (Item 4-enclosures 8 and 20; AE 9)

The debt in SOR ¶ 1.i (\$56,375) is alleged as a foreclosure on a timeshare. In his answer to the SOR, Applicant disputed the property was foreclosed. He purchased a timeshare from HIC in 2008 and made payments until sometime in 2018 when his financial issues became overwhelming. He admits he did not understand the timeshare process when he purchased it or how his costs continued to increase. There is a process where a timeshare may be “traded-in” for another. In 2010, Applicant “traded in” his timeshare for another and in 2011 he again “traded-in” the timeshare. He did this again in 2015 and 2017. Apparently, the “trade-in” process is used to leverage use of other HIC vacation properties across the country and is also another way to increase owner costs. Each time one wants to use a property in another location, they would have to trade in through the exchange process which increased the costs, which was never mentioned by HIC. (Response to FORM)

HIC refused to engage in any dialogue with Applicant regarding his property. HIC cancelled and charged off the timeshare in September 2018 and foreclosed in February 2020. Applicant was never notified the property was foreclosed until May 2023, which is why he denied the property was foreclosed in his SOR answer. It took more than a year of multiple phone calls and emails to HIC before it acknowledged the foreclosure. Applicant’s attorney engaged HIC and it could not produce evidence that Applicant had been notified of the foreclosure. Applicant had attempted to surrender the property over several years and HIC never mentioned to him the account was closed and the property foreclosed. HIC is the subject of multiple complaints through the Better Business Bureau related to predatory practices. (Item 4; AE 10, 11)

Applicant recently participated in another financial counseling course. He provided numerous letters reflecting his outstanding character and ability to protect classified information, and asserting he is not a threat to national security. He is described as diligent, honest, reliable, and loyal. He is a person who exercises good judgment and integrity. He is devoted to his church and volunteers his time and talents to the community. He is a trusted employee with the highest personal and professional standards. (Item 2-enclosure 3, 4,5, 6, 10; AE 2)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

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 relating to the guideline 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.

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

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had numerous delinquent credit cards, accounts, and a timeshare property. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 attributed his financial problems to a period when he was required to move his residence to remain employed. He maintained two households during this period. His salary was reduced. He had rental property and the tenants moved, thereby reducing his income. He overextended himself by using credit cards, which eventually became unmanageable. In addition, he had a timeshare that clearly had predatory business practices. His wife lost her job. Her parents lived with them. The pandemic also impacted their family with his father-in-law passing away from the virus. These were conditions beyond his control. Applicant began addressing his delinquent debts before he received the SOR. He participated in two debt-resolution programs and financial counseling. He has paid all of the debts alleged in the SOR, except the timeshare. Regarding the debt for the timeshare alleged in SOR ¶ 1.i, I find their failure to discuss resolving the timeshare mortgage, failure to notify Applicant of its foreclosure, and their reputation regarding their business practices rises to the level of being predatory. I find in his favor on this debt.

Based on all of the evidence, I conclude the circumstances that caused Applicant's financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. The conditions that resulted in his financial problems were beyond his control and he acted responsibly under the circumstances. He has participated in financial counseling and there are clear indications his financial problems are under control. He made good-faith efforts to resolve his debts and has done so. He provided sufficient evidence to address the legitimacy of the timeshare debt, and I resolve it in his favor. All of the above mitigating conditions 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 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.

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 considering all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline, F in my whole-person analysis. Although I have found in Applicant's favor on the debts alleged, I have some concerns about his failure to timely file his income tax returns for two years. I believe Applicant will be more diligent in the future and ensure they are filed timely so as not to impact his clearance eligibility. He has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns raised under Guideline F, financial considerations.

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.i: 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.

Carol G. Ricciardello
Administrative Judge