



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



In the matter of:)	
)	
)	ISCR Case No. 20-02077
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha LaFaye Manns, Esq., Department Counsel
For Applicant: *Pro se*

10/06/2023

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant’s financial problems were not caused by irresponsible or reckless financial habits, but by a long period of unemployment and underemployment. He has acted in good faith to repay his creditors and has taken steps to rehabilitate his student loans. Clearance is granted.

Statement of the Case

On February 12, 2021, the DOD issued an SOR detailing security concerns under the financial considerations guidelines. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be

submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to grant his security clearance. Applicant timely answered the SOR and requested a hearing.

At the hearing, convened on January 9, 2022, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated October 29, 2021. I admitted Government's Exhibits (GE) 1 through 4, and Applicant's Exhibits (AE) A through E, without objection. DOHA received the transcript on January 25, 2023. (Tr. 15-21)

Procedural Matters

Initially, Department Counsel sent the government's proposed documents to Applicant through DODSafe, a secure document exchange platform. Applicant reported that he was unable to retrieve the documents. Department Counsel sent them again on January 5, 2023. Applicant verified receipt of the disclosure letter and GE 1 through 3. (Tr. 12)

Before the hearing, Department Counsel served Applicant with a credit report dated December 5, 2022. However, he was unable to retrieve the document and review it before the hearing. The proffered credit report did not contain new information but provided the current status of the debts alleged in the SOR. After confirming that he was still ready to proceed with the hearing, I left the record open until January 27, 2023, for Applicant to review the document and lodge any objections. (Tr. 12-15) He did not. The document is admitted without objection as GE 4.

Findings of Fact

Applicant, 42, has worked for his employer, a federal contractor, as a project lead since April 2018. He was initially granted access to classified information in 2012 and maintained access until 2015. Between 2015 and 2018, he worked in private industry and did not require access to classified information. He completed his most recent security clearance application in November 2019, disclosing his failure to file his 2016 federal income tax return as well as four delinquent accounts. The investigation confirmed and the SOR alleged that Applicant owed \$44,260 on seven defaulted student loans (SOR ¶¶ 1.a – 1.e, 1.g – 1.h); \$3,501 for the deficiency balance on an apartment lease (SOR ¶ 1.f); \$576 for an outstanding cell phone account (SOR ¶ 1.i); and \$75 for an outstanding medical account. (GE 1 -2; Tr. 22, 42)

Applicant has two children from different relationships. Between 2008 and 2014, he worked for another federal contracting company, earning between \$40,000 and \$45,000 annually. He earned enough money to manage his financial obligations, which included informal agreements with his children's mothers to pay each \$500 for child support each month. In addition to the agreed upon amount, he often contributed between \$500 and \$700 of additional support to the children's mothers as needed. To have more money available for his children, he moved from the apartment referenced in SOR ¶ 1.f (\$3,501) to a cheaper unit. In 2014, his employer was acquired by another company. He resigned from his position in October 2015 after being informed that he

was being laid off. He was then unemployed for seven months. In February 2016, he started a commission-only position as an insurance salesman. He also sold products through a well-known national multi-level marketing company. He did not earn enough money to meet his financial obligations. (Tr. 22, 25-28, 32-38)

When Applicant became unemployed, he began to take steps to further reduce his expenses. Unable to maintain his apartment, he moved in with his father in October 2016. Because he was not earning sufficient income to pay all his obligations, his student loans became delinquent in November 2015. He returned to full employment in April 2017. He worked in a technician position until starting his current job in April 2018, which paid \$64,000 annually. Since then, his financial situation has changed. He continues to live with his father, splitting household expenses, and providing his father support after he was diagnosed with a neurocognitive disorder in early 2022. He no longer pays child support for his two children. His older child, now an adult, is living on his own with his wife and child. Applicant was awarded full custody of his younger child after the child's mother died. The child receives approximately \$600 social security death benefits each month. (Tr. 23, 25, 29-31, 38-40, 46, 48-52)

In August 2021, Applicant paid off the debts alleged in SOR ¶¶ 1.f (\$3,501); 1.i (\$576); and 1.j (\$75). Between November 2015 and March 2020, he did not make any payments on his student loans. He testified that he tried to rehabilitate his student loans in the past but could not recall the details of his efforts. He consolidated his loans (SOR ¶¶ 1.a – 1.e, 1.g – 1.h) into two accounts in September 2021. The loans are currently in administrative forbearance under the Covid-19 student loan payment pause issued by President Biden in March 2020, which also covered delinquent and defaulted loans. (See, <https://studentaid.gov/announcements-events/covid-19/default>) Under the terms of the pause, he is not required to take any corrective actions towards the loans or make any payments. He entered a rehabilitation program in late 2021 and provided evidence that he made one payment of \$253.23 in December 2021. He could not provide information about the terms of the rehabilitation program or the repayment terms of the loan once the administrative forbearance is lifted. (Tr. 23-24, 39, 41-43, 53; AE A-E; Answer)

Applicant considers his finances to be stable. He earns approximately \$70,000 annually. He lives within his means and has approximately \$500 in disposable income each month. He has accumulated \$2,200 in cash savings and over \$10,000 in retirement savings. (Tr. 39, 43-44, 54-56)

Policies

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(a), 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.

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

Failure to meet one's 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. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18) The record establishes the Government's *prima facie* case that Applicant owed

\$48,412 in delinquent debt, mostly comprised of \$44,260 on seven delinquent student loans. The following financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(b) unwillingness or inability to satisfy debts regardless of the ability to do so; and

AG ¶ 19(c) a history of not meeting financial obligations.

The record contains sufficient evidence to mitigate the alleged concerns. The following mitigating conditions apply:

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of unemployment, 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,

AG ¶ 20(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 not the result of reckless or irresponsible behavior, but instead were caused by events beyond his control — 7 months of unemployment followed by 15 months of underemployment. During this period, he became unable to pay his financial obligations and incurred delinquent debt. He acted responsibly considering these circumstances by reducing his living expenses. Upon returning to full-time employment, he did not immediately begin to address his delinquent debt. However, the record establishes that other life issues demanded his attention, such as his father's medical issues and the needs of his younger son after the death of his mother.

The record supports a finding that Applicant has made a good-faith effort to resolve his delinquent debt. He resolved three debts totaling \$4,152 (SOR ¶¶ 1.f, 1.i, 1.j) in August 2021. Despite having the benefit of the Covid-19 payment pause, he took steps to address his student loans. He consolidated the seven loans into two, which he believes will make them easier to manage and pay going forward. Although he does not know what his payments will be once the pause is lifted, the changes in finances over the last few years indicate that he has the means to make the payments. Since returning to work, his living expenses have decreased, and he no longer has child support obligations. His minor child receives social security income, which supplements the cost of his care. He has also managed to increase his short-term cash and retirement savings.

Based on the record, I have no doubts regarding Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt collection

proceedings. Rather the purpose of the adjudication is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.” (AG ¶ 2(a)) Furthermore, applicants are not held to a standard of perfection. Even though Applicant’s finances are not perfect, he has demonstrated that he will take action to reduce his discretionary expenses, as necessary, to prioritize his moral and financial obligations. Accordingly, a fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised under the financial considerations guideline 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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge