



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



In the matter of:)	
)	
)	ISCR Case No. 22-02425
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: Melissa Watkins, Esq.

12/13/2023

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 February 28, 2023, 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 May 1, 2023 (Answer), in which he requested a hearing before an administrative judge. The case was assigned to me on September 12, 2023.

The hearing was convened as scheduled on November 16, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through E, without objection. At Applicant’s request, I left the record open until December 1, 2023, to provide an opportunity for the parties to submit post-hearing documents. Applicant timely submitted AE F through J, which I also admitted without objection. I received a transcript (Tr.) of the hearing on November 21, 2023.

Findings of Fact

Applicant is a 44-year-old employee of a government contractor for whom he has worked since 2003. He earned a high school diploma in 1997 and a bachelor's degree in 2022. He has been married since September 2014. He has two children, ages 12 and 9. He enlisted in the Marines in 1997 and was honorably discharged in 2002. He has held a security clearance since 1997. (Tr. 17-20, 45-46, 93-94; Answer; GE 1)

In the SOR, the Government alleged Applicant's five delinquent financial accounts totaling approximately \$42,000. These delinquent accounts consisted of a personal loan (SOR ¶ 1.a), credit cards (SOR ¶¶ 1.b and 1.c), an automobile loan (SOR ¶ 1.d), and a telecommunications debt (SOR ¶ 1.e). He denied all the SOR allegations because he claimed he was in the process of resolving them and they should not result in the loss of his security clearance. Notwithstanding his denials, the SOR allegations are established by the Government's 2021, 2022, and two 2023 credit reports. (Answer; GE 1-5; AE A-H)

Between December 2022 and May 2023, Applicant resolved all the accounts in the SOR. He fell behind on the SOR accounts in about 2015 because his wife, with whom he shared household expenses, was laid off. From 2012 until about 2022, she also had multiple serious health problems, including mental health issues, that contributed to her inability to find income comparable to what she earned before she lost her job. In December 2022, Applicant contacted a debt consolidation company to help him resolve the SOR debts. He then contacted the creditors of the SOR debts. He made payment arrangements with the creditors and satisfied these debts for less than the full balance after he received the SOR. He settled the debts in SOR ¶¶ 1.a and 1.b after the creditor filed legal proceedings against him. (Tr. 20-32, 46-60, 76, 79-84, 93-100; Answer; GE 2-5; AE A-I)

Applicant claimed that he thought he was beginning to regain his financial footing in about late 2018, but he concentrated on saving money and paying other, nondelinquent debts, until the end of 2022. His wife's mental health also informed the timing of when he addressed his SOR debts. He admitted that the possibility of losing his security clearance was a motivating factor in resolving his SOR debts. I observed his and his wife's demeanor while they testified and found their testimony, including statements about the resolution of his SOR debts, to be credible. Their willingness to openly testify about derogatory information bolstered their credibility. Applicant also provided documentary corroboration of the resolution of the SOR debts. (Tr. 20-32, 46-60, 76, 79-84, 93-100; Answer; GE 2-5; AE A-I)

Over the last ten years, Applicant has earned at least \$65,000, annually. He also has received about \$1,900 in monthly military disability benefits. His wife has earned about \$65,000 per year since mid-2018, when she regained full-time employment. She expects to earn more when she finishes human resource (HR) and leadership training with her employer. She also expects that her new position in HR will be more stable and transferable than her current and past positions that were reliant on the economic health of the oil and gas industry. She is receiving medical treatment for her health issues and

is no longer suffering from them to a degree that negatively impacts her ability to contribute to the family's financial standing. Applicant and his wife sit down together monthly to pay the bills, and they have established a written budget. Their budget shows that after paying their expenses they have a monthly surplus of about \$3,700. They have several non-delinquent credit cards and non-delinquent revolving loan accounts on which they maintain a balance. Applicant has completed some credit counseling courses through a non-profit organization. He and his wife both testified that he is able to pay his bills on time and that they had about \$10,000 combined in three bank accounts. Prior to resolving the SOR debts, they had about \$20,000 in those bank accounts. Applicant also has a retirement account with a balance of about \$87,000. Neither he nor his wife currently have any delinquent financial accounts. (Tr. 33-46, 59-88, 93-106; Answer; GE 4, 5; AE E, J)

While Applicant was in the Marines, he earned several commendations and medals. He has also received several awards at work. His colleagues, friends, and family have written character-reference letters advocating that he be awarded a security clearance and attesting to his good character, trustworthiness, reliability, and patriotism. His wife also testified to his reliability, honesty, and strength of character. (Tr. 33-46, 59-88, 93-106; Answer; GE 4, 5; AE E, J)

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 within DOD 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; and

- (c) a history of not meeting financial obligations.

Applicant’s five consumer accounts totaling approximately \$45,000 were delinquent for several years. The above disqualifying conditions are established.

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; and

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

Applicant's delinquencies were caused by his wife's unemployment and health issues. These conditions were largely beyond his control. In response, he acted responsibly by hiring a debt consolidation company, contacting creditors, making payment arrangements, and complying with those arrangements. While he began contacting creditors and paying his SOR debts after he received the SOR, he contacted the debt consolidation company prior to receiving it. There is evidence that he could have begun resolving his SOR debts sooner, but he and his wife credibly testified that their desire to save money and her mental health issues largely precluded them from resolving the SOR debts until they did. He has provided sufficient evidence that his efforts to repay overdue creditors were made in good faith.

Applicant has undergone financial counseling. His current financial situation, including his and his wife's income, substantial savings, their job stability, and lack of delinquent debts, are sufficient to show that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. All the above mitigating conditions apply. The financial considerations security concerns are mitigated.

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(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 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 have also considered Applicant's good work performance, his honorable military service, and his positive character references.

Overall, the record evidence leaves me without questions and 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.e:	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