



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



In the matter of:)
)
) ISCR Case No. 22-01681
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on December 1, 2022, and requested a hearing before an administrative judge. The case was assigned to me on July 11, 2023. The hearing was convened as scheduled on August 8, 2023.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional documentary evidence. He

submitted a memorandum and documents related to his debt-resolution program that I marked as Applicant Exhibits (AE) A and B and admitted without objection.

SOR Amendment

On my own motion and without objection from either side, SOR ¶ 1.g was amended to change the amount from “9,841” to “\$7,581.” (Transcript (Tr.) at 31)

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He has worked for his current employer since July 2021. He served on active duty in the U.S. military from 1986 until he retired with an honorable discharge in 2006. He attended college, but he has not earned a degree. He is married with two adult children. (Tr. at 11, 14-18, 37, 39; GE 1)

The SOR alleges eight delinquent debts totaling about \$83,000. The debts are listed on one or more credit reports from February 2022, November 2022, and March 2023. (Tr. at 26, 28; Applicant’s response to SOR; GE 3-5)

Applicant had a good income while working overseas from about 2009 to 2013. He did not make as much when he returned and relied on credit. His balances increased to the point where it was difficult to keep up. He contracted with a debt-settlement company in June 2018 to assist him in resolving his debts. (Tr. at 11-16, 20, 40; Applicant’s response to SOR; GE 1, 2; AE A, B)

Applicant enrolled ten debts, totaling about \$100,000, in the company’s debt-resolution program, including five of the debts alleged in the SOR. Applicant agreed to make monthly \$600 payments, which would be held in an escrow account, minus the company’s fees. The debt-settlement company agreed to negotiate settlements with his creditors and use the accumulated funds in the escrow account to pay the settlements. (Tr. at 11-13; Applicant’s response to SOR; GE 2; AE A, B)

Applicant made numerous payments in excess of the \$600 monthly payments. He also occasionally missed a payment. As of August 2023, he had deposited \$44,096 into the escrow account, and it had a balance of \$4,084 available for settlement payments. Four debts totaling about \$30,500 were not alleged in the SOR because they were settled and paid before the SOR was issued. (Tr. at 13, 21-22, 25, 40, 44; Applicant’s response to SOR; GE 2; AE A, B)

The debt-settlement company reached an agreement with the credit union for the charged-off \$20,000 debt alleged in SOR ¶ 1.c to settle the debt for \$9,812. The credit union charged off \$20,817. The credit reports show declining balances and indicate the account was being paid “under a partial payment agreement.” By February 2022, the balance had been reduced to \$16,626. The balance was \$13,900 in November 2022 and \$12,810 in March 2023. (Tr. at 22, 25; Applicant’s response to SOR; GE 2-5; AE A, B)

The debt-settlement company reached a settlement agreement with the bank for the \$3,889 charged-off debt alleged in SOR ¶ 1.d. The credit reports show declining balances. By February 2022, the balance had been reduced to \$3,305, and the balance was \$1,925 in November 2022. The settlement payments were completed in December 2022, which resolved this debt. (Tr. at 25-26; Applicant's response to SOR; GE 2-5; AE A, B)

SOR ¶ 1.e alleges a \$1,117 delinquent debt to a collection company on behalf of a bank. The debt-settlement company reached an agreement to settle the debt, which was \$1,445, for \$723. The balance was \$1,254 in February 2022, before the SOR was issued. By November 2022, the balance had been reduced to \$1,117, and it was \$1,057 in March 2023. (Tr. at 25-27; Applicant's response to SOR; GE 2-5; AE B)

Applicant stated that he paid the \$54 telecommunications debt alleged in SOR ¶ 1.f. The debt is listed on the February 2022 credit report, but not the two later credit reports. (Tr. at 27-29; Applicant's response to SOR; GE 3-5)

The debts alleged in SOR ¶¶ 1.a (\$23,167) and 1.b (\$22,222) are in the debt-resolution program but have not yet been paid. SOR ¶ 1.g alleges a \$7,581 charged-off deficiency balance on an auto loan after the vehicle was repossessed. Applicant took out the loan for a vehicle for his son, with his son making the payments. His son was out of work and unable to make the payments, so he voluntarily returned the vehicle. This debt and the debt alleged in SOR ¶ 1.a (\$5,226) are not in the debt-resolution program, but Applicant is in the process of enrolling them in the program. (Tr. at 22-25, 29-33; Applicant's response to SOR; GE 2-5; AE A, B)

Applicant has not received formal financial counseling aside from any advice he received from the debt-settlement company. He credibly testified that he would continue with the debt-resolution program until his debts are paid. The process has taken longer than he anticipated, but it is working for him, and he is committed to it. His finances are not perfect, but they are better than they were. He has the means to continue with the program until completion. (Tr. at 17-20, 34-42, 45-47; GE 2-5)

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

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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 had a good income while working overseas from about 2009 to 2013. He did not make as much when he returned and relied on credit. His balances increased to the point where it was difficult to keep up. He contracted with a debt-settlement company in June 2018 to assist him in resolving his debts. As of August 2023, he had deposited \$44,096 into the escrow account, and it had a balance of \$4,084 available for settlement payments. Four non-SOR debts totaling about \$30,500 were settled and paid before the SOR was issued. The \$3,889 charged-off debt alleged in SOR ¶ 1.d has been settled and paid. The \$20,000 and \$1,117 debts alleged in SOR ¶¶ 1.c and 1.e have been settled with payments issued. The payments have either been completed or will be completed within a reasonable period.

Applicant testified that he would continue with the debt-resolution program until his debts are paid. The process has taken longer than he anticipated, but it is working for him, and he is committed to it. His finances are not perfect, but they are better than they were. He has the means to continue with the program until completion.

Applicant does not present a perfect case in mitigation, but perfection is not required. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant still has debts to resolve, but I believe he is honest and sincere in his intentions to address his debts through the debt-resolution program. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. It may take time, but I am convinced he will eventually resolve his financial problems. See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern." The above mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Appendix C of the adjudicative guidelines gives me the authority to grant conditional eligibility “despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s).” I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant’s finances.

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.

Edward W. Loughran
Administrative Judge