



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



In the matter of:)	
)	
)	ISCR Case No. 23-00191
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2024

Decision

LAFAYE, Gatha, Administrative Judge:

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

Statement of the Case

Applicant signed and submitted a security clearance application (SCA) on September 29, 2022. On February 15, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The CAS acted under Executive Order (EO) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense (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 responded to the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2023. The hearing was convened as scheduled on November 28, 2023. Government Exhibits (GE) 1 through 4 were admitted

in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted in evidence without objection.

Findings of Fact

In Applicant's response to the SOR, he admitted all allegations in SOR ¶¶ 1.a through 1.e. His admissions are incorporated in my findings of fact.

Applicant is a 34-year-old full-time employee of a defense contractor. He received his high school diploma in May 2008, and subsequently attended community college for about a year before leaving without graduating. He has never been married and does not have children. (GE 1; Tr. 21-30)

Applicant was initially hired in September 2022 as a full-time pipefitter earning \$19.75 per hour. He was released from the position in about February 2023 after he was not initially granted a security clearance. After about three months of unemployment, he testified he was re-hired by the same defense contractor in May 2023, and currently works as a full-time sheet metal fabricator earning \$21.23 per hour. (GE 1; Tr. 19-21, 26-29)

Applicant previously worked as a truck driver for three different non-defense employers from about June 2016 to about September 2022. He testified his annual earnings for work as a truck driver in 2016 ranged between \$40,000 and \$45,000. From 2017 until he left his last job as a truck driver in September 2022, he testified he earned between \$52,000 and \$53,000. He testified his delivery work slowed down during the COVID-19 pandemic, which negatively impacted his pay. He was paid based on the load and deliveries, and with few deliveries he was paid less. As a result, he fell behind on some bills. (Tr. 27-29, 49-51)

Applicant gets paid weekly and his current net or take-home pay is about \$628 each week. (Tr. at 55) He participates in his employer's 401(k) plan and saves a portion of his earnings each month. He has two savings accounts, one with a balance of about \$1,800. He also minimized his living expenses by moving out of his independent apartment to live with his sister. He pays her about \$400 per month for rent, which includes all utilities. He has not taken on any new debts. He owns an older car, manufactured in 2001, and a 2011 motorcycle both without debt. He testified he used his profit of about \$25,000 from the sale of his home in June 2023 to pay off his delinquent debts. (Tr. at 64) He has not received formal counseling, but he maintains a budget, which he plans to revise to reflect his current pay level. (Tr. at 59) He testified he is able to meet his financial obligations though for some months he has less money remaining over. (Tr. 55-60)

During the hearing, Applicant disclosed he has not yet filed his 2022 federal and state income tax returns because he is missing a W2 from his previous employer. He is seeking a tax professional to help him navigate this issue. He intends to file his 2023 income tax returns on time. (Tr. 61-64) Delinquent or unfiled income tax returns were not alleged in the SOR.

The SOR alleged five financial concerns (SOR ¶¶ 1.a - 1.e) totaling about \$29,900 in delinquent debts. The evidence regarding the debts alleged in the SOR is summarized below.

SOR ¶ 1.a (\$10,207): Applicant admitted this delinquent consumer debt for a car he purchased for himself, a 2017 Ford. He fell behind on payments during the COVID-19 pandemic because of cut-backs in truck deliveries and cargo loads. His pay as a truck driver largely depended upon the weight and number of deliveries to factories and plants. During the pandemic, numerous factories and plants closed down, which “drastically reduced” the number of deliveries and loads he was able to make. He testified his hours were reduced significantly at times. For this debt he testified he was about four payments behind, and the creditor was unwilling to work with him. (GE 2 at 1-2) In June 2023, he paid off this debt with proceeds from the sale of his home. (GE 3 at 2; AE C; Tr. 27, 49-51) This debt is resolved.

SOR ¶ 1.b (\$6,541): Applicant admitted this delinquent consumer debt. He testified this was one of two car loans he cosigned for a long-time friend who needed help getting started after leaving the military. This car was a sports car, and unsuitable for use in inclement winter weather. His friend wrecked this car and it was deemed a total loss. His friend ultimately lost his job, and was unable to pay. Applicant paid off this debt in June 2023 with proceeds from the sale of his home. (GE 3 at 3; GE 4 at 4; AE B; and Tr. 34-36, 50-51) This debt is resolved.

SOR ¶ 1.c (\$2,823): Applicant admitted this delinquent consumer debt. He testified this loan was a smaller consolidation loan to pay off smaller debts when he was younger. He fell behind on payments in 2020 during the COVID-19 pandemic due to reduced pay as discussed above. He paid off this debt in June 2023 with proceeds from the sale of his home. (GE 3 at 3; GE 4 at 5; and Tr. 45-49) This debt is resolved.

SOR ¶ 1.d (\$2,019): Applicant admitted this delinquent consumer debt. He testified he incurred this debt for the purchase of a refrigerator and stove for his first new home. He testified he set up automatic payments for this bill, but believed the credit card he used expired, and automatic payments stopped. He did not remember to reset automatic payments, which would have been in the 2020 timeframe during the COVID-19 pandemic. (Tr. at 41) He experienced financial problems for many of his bills due to reduction in work assignments and pay as discussed above. He addressed this debt when he learned about its existence during his interview with investigators in October 2022. He stated he contacted the creditor immediately after the interview and begin working on payment arrangements. He ultimately paid off this delinquent debt in June 2023 with proceeds from the sale of his home. (GE 3 at 3; AE A; Tr. 40-42) This debt is resolved.

SOR ¶ 1.e (\$8,347): Applicant admitted this delinquent consumer debt. He testified this was the second car loan he cosigned for a long-time friend who needed help getting started after leaving the military, discussed in SOR ¶ 1.b above. This car was a four-wheel drive car suitable for winter. He testified he learned his friend lost his job and defaulted on the loan. Applicant has not communicated with his friend and stated he learned a valuable lesson and will not take this kind of risk again to help a friend. In June 2023, he

made a \$1,000 lump-sum payment towards this delinquent debt with the remaining proceeds from the sale of his home. He is communicating with the creditor, and he credibly testified concerning his commitment to paying off this debt. (GE 3 at 4; GE 4 at 3; Tr. 43-44, 50) This debt is being resolved.

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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant’s admissions and the evidence in the case establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

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 began during the COVID-19 pandemic. He fell behind on paying bills when numerous factories and plants closed down, drastically reducing his work as a truck driver whose income was based upon the volume and number of deliveries made to factories and plants. Using the profit from the sale of his home, he took action to pay off his delinquent debts. He paid off four of the five delinquent debts in the SOR. He also made a lump-sum payment of \$1,000 towards the payoff of his fifth debt, and credibly testified concerning his commitment to paying off the debt completely. He also relinquished his independent apartment to save money by renting from his sister. He has not taken on any significant new debts despite owning a car as a daily driver that is over 20 years old.

Applicant's finances are not perfect; however, perfection is not required. The security clearance adjudication process is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. It is not a debt collection procedure. 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).

Overall, Applicant has demonstrated he acted responsibly under the circumstances. Applicant's current financial situation does not cast doubt on his judgment, reliability, trustworthiness, and ability to protect classified information. Under the facts of this case, he has mitigated the security concerns regarding his finances.

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.

Overall, the record evidence leaves me without any questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude he mitigated the financial considerations security concerns in this case.

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.

Gatha LaFaye
Administrative Judge