



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01549
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
 Alison O’Connell, Esq., Department Counsel  
 For Applicant: *Pro se*

01/30/2024

**Decision**

GARCIA, Candace Le’i, Administrative Judge:

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

**Statement of the Case**

On September 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on September 18, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on May 8, 2023, scheduling the matter for a hearing on June 27, 2023.

I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 through 10. Applicant testified, and he did not call any witnesses or submit

documentation. At Applicant's request, I kept the record open until July 25, 2023, so that he could submit post-hearing documentation. He timely submitted documentation that I marked collectively as Applicant Exhibit (AE) A and admitted in evidence without objection. Department Counsel also timely submitted additional documentation that I marked as GE 11 and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) of the hearing on July 7, 2023.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a-1.j and 1.n-1.o, and he denied ¶¶ SOR 1.k-1.m. He is 43 years old. He is not married, and he does not have children. He graduated from high school in 1999. He attended a community college from 2001 to 2006 and earned an associate degree. He then attended a university from 2009 to November 2013 and earned a bachelor's degree in computer information science. He owned a home from around 2010 to 2018, but he was living with a family member as of the date of the hearing. (Answer; Tr. at 6-8, 22-23, 25, 32, 44, 70; GE 1)

From 2006 to the summer of 2014, Applicant worked as a server at a restaurant. He then briefly worked for a software company for four months until the company downsized in December 2014. He subsequently worked various temporary jobs, started his own cleaning service for several months, and worked part time for a tax preparation service from December 2014 to April 2015. From April 2015 to June 2019 and October 2019 to March 2020, he worked for two companies, both DOD contractors. He was laid off and unemployed until July 2021, when he began working for his employer, another DOD contractor. He was first granted a security clearance in 2015. (Tr. at 5, 22-24, 32-35, 38-42; GE 1-4)

The SOR alleged that Applicant had 10 delinquent federal student loans, totaling \$68,747. (SOR ¶¶ 1.a-1.j) It also alleged that he had three unpaid judgments, totaling \$2,859, entered against him in 2012, 2014, and 2019. (SOR -1.m). It also alleged that he failed to file his federal and state income tax returns for tax years (TY) 2016, 2017, and 2018. (SOR ¶¶ 1.n-1.o) The SOR allegations are established by Applicant's admissions in his Answer; his April 2020 security clearance application (SCA); his responses to interrogatories from September 2020, March 2021, and April 2021; court records; and credit bureau reports from December 2019, June 2020, May 2021, and May 2022. (Answer; GE 1-9)

Applicant took out student loans to attend college for his bachelor's degree from 2009 to 2013. He took some time off in 2010 to purchase a \$90,000 home. He lived there when he returned to school to obtain his degree and he intended to later use it as an investment property. He made his first payment towards his student loans before graduation. In approximately 2012 or 2013, he began experiencing financial problems when he faced discrimination at his restaurant job after certain managers cut his hours, assigned him to bad sections, and did "things that would hinder me making money . . . ." His pay decreased by approximately 30% and he fell behind on his mortgage. He moved out of his home and in with his father for eight months in the summer of 2013. This affected his ability to receive his mail, to include student loan and tax documentation. He continued

to incur utility expenses for his home. When his student loans became due in May 2014, he was unable to pay them despite obtaining deferments for three-to-six-month periods on several occasions in 2014 and 2015. From the summer of 2014 to April 2015, as previously discussed, he was underemployed, and he incurred approximately \$4,000 in self-employment-related expenses for his cleaning service. In around 2014 or 2015, the mortgage creditor thought he abandoned his home. It went into foreclosure in 2017 or 2018 and he did not owe a deficiency balance. (Tr. at 14-15, 22-44, 56-58; GE 1-4, 6-10)

Applicant's wages were garnished in the amount of \$1,000 monthly by the U.S. Department of Education (DoE) from October 2019 to March 2020 for his student loans. (SOR ¶¶ 1.a-1.j) In the summer of 2022, he completed documentation in an attempt to set up an income-based repayment plan with the DoE, and he made two payments to the DoE of \$150 each in December 2022. He did not receive a response. He understood that he did not have to pay his student loans during the COVID-19 payment pause. In July 2023, he agreed to long-term payment arrangements with the DoE, his student loans were transferred to a new loan servicer, and they were no longer in default status. The most recent credit bureau report from July 2023 reflects that while these student loans continue to have outstanding balances, they were no longer reported as delinquent, and they were scheduled to go to a positive status by December 2024. (Tr. at 44-49, 65-67; GE 1-4, 9-10; AE A)

SOR ¶ 1.k is a \$2,576 judgment entered against Applicant by a property management company in 2019. He contracted with the company in 2017 for a term of one or two years to obtain renters for his home. The company found renters for a six-month period and then he elected to "just get the house back to the mortgage." He did not believe he owed the company, and he was unaware of the judgment until he received the SOR. He then immediately telephoned the company to inquire about the judgment, but he was not given an explanation. In late 2022, the court that issued the judgment garnished his wages for \$3,100. Court records reflect that Applicant satisfied this judgment in March 2023. (Tr. at 49-55, 67-70, 72-73; GE 1-2, 5, 11)

SOR ¶¶ 1.l and 1.m are for judgments entered against Applicant by a city treasurer's office in the amounts of \$59 and \$224, in 2012 and 2014, respectively, for property taxes related to his home. These debts are established by court records, and they are not reported on any of the credit reports. Applicant stated that he paid these debts. (Tr. at 55-56; GE 5)

Applicant filed his federal income tax returns for TY 2016, 2017, and 2018 in 2021, and he owed \$820, \$750, and \$385 respectively, which he paid when he filed. He believed he filed his state income tax returns for those tax years at the same as his federal income tax returns, but he acknowledged that he had not yet done so as of the date of the hearing. He did not believe he owed any state taxes for those tax years. In July 2023, he stated that he filed these state income tax returns in person with the state tax authority. (SOR ¶¶ 1.n-1.o; Tr. at 48, 56-61; GE 2-4; AE A)

Applicant earned approximately \$60,000 annually from October 2019 to March 2020 and \$50,000 annually from April 2015 to June 2019. As of the date of the hearing

and since July 2021, his annual income was approximately \$80,000. He stated that his total monthly income and monthly net remainder was \$2,300 since he began residing with a family member, and he had \$22,000 in his joint checking and savings accounts. He therefore had the financial means to pay his student loans. He stated that he filed his income tax returns for TY 2019 through 2022 and he did not owe any taxes for those tax years. As of the date of the hearing, he had been working with a credit repair company since approximately April 2023 to dispute debts on his behalf and he was monitoring his credit through a credit monitoring service, but he had not received credit counseling. His most recent credit report, from July 2023 only reflects one minor delinquent debt. (Tr. at 33, 35, 38-42, 59-64, 69-72; GE 1-4, 10; AE A)

## **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."

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 Exec. Or. 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

Exec. Or. 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not paying his debts. He also failed to timely file his federal and state income tax returns for tax years 2016 to 2018. AG ¶¶ 19(c), 19(c), and 19(f) 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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Circumstances beyond Applicant's control contributed to his financial problems. Nonetheless, under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He filed his federal income tax returns for TY 2016, 2017, and 2018, and paid the associated taxes, in 2021, before the SOR. Also, before the SOR, in the summer of 2022, he attempted to set up an income-based repayment plan with the U.S. DoE for his student loans, and he made two payments totaling \$300 toward his student loans in December 2022. After the COVID-19 payment pause was lifted, he agreed to long-term payment arrangements with the DoE in July 2023, his student loans were transferred to a new loan servicer, and they were no longer in default status. He has the financial means to make monthly payments on his student loans. Upon receiving the SOR and learning about the judgment in SOR ¶ 1.k, he resolved it in March 2023. He stated that he filed his state income tax returns for TY 2016 through 2018 in person with the state tax authority in July 2023, and that he paid the smaller judgments in SOR ¶ 1.l and 1.m.

Applicant's most recent credit bureau report from 2023 reflects only one minor delinquent debt. While he has not received financial counseling, he is utilizing a credit repair company and a credit monitoring service to maintain control over his finances. He has the financial means to continue to maintain control over his finances. I find that his financial issues do not continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶ 20(c) does not apply but AG ¶¶ 20(a), 20(b), 20(d), and 20(g) 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 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not 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.o: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge