



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



In the matter of:)
)
) ISCR Case No. 23-00113
)
Applicant for Security Clearance)

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 9, 2023, 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 February 21, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on October 27, 2023, scheduling the matter for a hearing on November 17, 2023.

I convened the hearing as scheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 7 without objection. Applicant testified and he did not call any witnesses or present any documentation. I kept the record open until December 1, 2023,

to enable him to submit documentation. He did not do so and the record closed. DOHA received the hearing transcript (Tr.) on November 30, 2023.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.d, 1.f, and 1.h-1.i and he denied SOR ¶¶ 1.e and 1.g. He is 37 years old. He has never married and he has two children, ages 11 and 9. He graduated from high school in 2010 and attended college part time in February 2012 and from January 2017 to January 2018 but did not earn a degree. He has lived with his mother since 2021. (Tr. 6-7, 24-28, 57-59, 69-71; GE 1-2)

Applicant worked for non-defense contractors as a medical secretary from 2010 to 2018, an office manager from 2018 to 2019, a security site manager from 2019 to 2020, a security lieutenant from 2020 to 2021, a concierge and then a leasing manager from 2021 to 2022, a restaurant chef from 2022 to 2023, and a chef for a private company since September 2023. He was unemployed for three months in 2013 and again in 2018. Since 2020, he has also worked as a consultant for his employer, a defense contractor. He has never held a security clearance. (Tr. 7-8, 28-32, 52, 66-67, 71-79; GE 1-2)

The SOR alleged that Applicant had eight delinquent consumer debts totaling \$19,609 (SOR ¶¶ 1.a-h) and \$12,000 in child support arrears (SOR ¶ 1.i). The SOR allegations are established by his admissions in his Answer; his February 2022 security clearance application (SCA); his March 2022 interview with an authorized DOD background investigator; his October 2022 response to interrogatories; and credit bureau reports (CBR) from March 2022, November 2022, January 2023, and November 2023. (GE 1-7)

SOR ¶ 1.a is a debt buyer account placed for collection in the amount of \$5,201. Applicant used this account when he worked for a previous employer to purchase electronics. He paid the account through automatic deductions from his paycheck and was unaware that he had an outstanding balance until he was contacted by the creditor in approximately 2020. He made monthly payments of \$100 at unrecalled dates but stopped because he could no longer afford to do so. As of the date of the hearing, he had not contacted the creditor to try to resolve this debt. (Tr. 31-36, 79-80; GE 4, 7)

SOR ¶ 1.b is a \$586 charged-off online retail account. Applicant believed he paid this debt in 2021. When he learned during his March 2022 background interview that he had an outstanding balance of approximately \$500, he telephoned the creditor to determine its status. He stated that the creditor informed him that he had a zero balance but he did not provide documentation to corroborate his claim. Although this debt is reported on the January 2023 and November 2023 CBRs with a zero balance, both CBRs also reflect that this account was charged off in the amount of \$586. This debt is not resolved. (Tr. 36-40, 80-82; GE 4, 7)

SOR ¶ 1.c is a \$9,174 charged-off auto loan. Applicant obtained this auto loan in 2012 to purchase a car. His car was involuntarily repossessed in approximately 2013 because he could no longer afford to make his monthly car payments. He believed he

resolved this debt when the creditor sold the car at auction and applied the proceeds to his remaining loan balance. When he learned during his March 2022 background interview that he still owed this debt, he contacted the creditor and entered into a payment arrangement of \$380 monthly. He made payments of \$174 and \$375 in October 2022 and November 2022, respectively, but he has not since made any payments. This debt is not resolved. (Tr. 39-43, 82-84; GE 2-3, 5, 6)

SOR ¶ 1.d is a cellular account placed for collection in the amount of \$1,912. Applicant cosigned this account for his ex-fiancée and her children. He was unaware that it had an outstanding balance until his March 2022 background interview. He has not contacted the creditor to resolve this debt. (Tr. 43-44, 84-86; GE 2, 4-7)

SOR ¶ 1.e is a music store account placed for collection in the amount of \$1,110. Applicant opened this account so that his ex-girlfriend could purchase a violin for her child. When they parted ways, his ex-girlfriend was supposed to pay this debt but she did not. He stated that he telephoned the creditor in February 2023 and was informed that he had a zero balance but he did not provide documentation to corroborate his claim. This debt is unresolved. (Tr. 44-45, 86; GE 2-3, 5, 6)

SOR ¶ 1.f is a \$732 charged-off credit card. Applicant could not recall when he last made a payment toward this debt. This debt is unresolved. (Tr. 45-50, 86-87; GE 2, 5)

SOR ¶ 1.g is a cellular account placed for collection in the amount of \$651. Applicant was unsure why he had an outstanding balance because he has a cellular account with this creditor that is current. He has not contacted the creditor to determine the status of this debt and it is unresolved. (Tr. 48-49, 87; GE 2-3, 5, 6)

SOR ¶ 1.h is a \$243 charged-off credit card. Applicant stated that he made an unspecified number of payments of \$20 toward this debt and he last made such a payment in March 2023. He did not provide documentation to corroborate his claim of payments and this debt is unresolved. (Tr. 45-51, 87-88; GE 4-5, 7)

Applicant incurred \$12,000 in child support arrears (SOR ¶ 1.i) when a child support order was issued in 2019 for his nine-year-old child. Aside from a few missed payments when he was unemployed in 2018, he stated that he has consistently paid this child support obligation through automatic pay deductions of \$1,000 monthly, of which \$400 is applied to his arrears. He did not provide documentation to corroborate his claim of payments toward these arrears. (Tr. 25-27, 51-53, 59-69)

Applicant attributes his delinquent debts to his periods of unemployment, minimal income, and his child support obligations. In addition to the child support arrears in SOR ¶ 1.i, Applicant was ordered in 2018 to pay child support for his 11-year-old child, which included \$7,000 in arrears. He stated that he paid this child support obligation through an automatic pay deduction of \$975 monthly until 2019, when it was modified to \$600 monthly, of which \$150 was applied to his arrears. He stated that he paid this obligation until 2021, when the child support enforcement agency stopped the order at the request of the child's mother. She and Applicant agreed that she would make such a request

because he could not afford the payments, but he would financially contribute when he had the ability to do so. He stated that he resolved the arrearage through monthly payments of \$380 until September 2023. (Tr. 25-32, 42, 44, 50-79, 81, 84, 88-91; GE 1-3)

Applicant earned approximately \$48,000 annually before 2020. As a DOD consultant, he earned an annual income of \$5,000 in 2020 and \$10,000 in 2021 and 2022; he had not yet earned an income in 2023 due to a lack of work. In his non-DOD employment, he earned an annual income of approximately \$40,000 from 2020 to 2021; \$60,000 in 2022; and \$65,000 until September 2023, when his annual salary dropped to \$38,000. He stated that he did not have much of a monthly net remainder after contributing \$1,700 for rent, and that his mother provided him with financial assistance. He estimated that he had \$200 in his combined checking and savings accounts. He did not have a retirement savings account. He spoke with a debt consolidation company in 2020 but elected not to pursue it. He has not received credit counseling. (Tr. 27-32, 42, 44, 50, 52-59, 69-79, 81, 84, 88-91; GE 1-3)

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

Applicant has a history of not paying his debts. AG ¶¶ 19(a) and 19(c) 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.

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Although Applicant did not provide documentation to corroborate his claim of payments toward his child support arrears SOR ¶ 1.i, he incurred these arrears immediately upon issuance of the child support order in 2019. In addition, except for a few missed payments during his 2018 period of unemployment, he stated that he has consistently paid his child support obligation since the order was issued. He has done so through automatic pay deductions of \$1,000 monthly, of which \$400 is applied to his arrears. AG ¶¶ 20(a), 20(b), and 20(d) apply to SOR ¶ 1.i and I find that allegation in Applicant's favor.

Applicant has either not made efforts to resolve or did not provide documentation to corroborate any of his claims of payment or resolution for the remaining SOR debts. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply to SOR ¶¶ 1.a through 1.h.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge