



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



In the matter of:)	
)	
)	ISCR Case No. 23-00174
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Smith, Esquire, Department Counsel
For Applicant: *Pro se*

03/08/2024

Decision

HOGAN, Erin C., Administrative Judge:

On April 24, 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On May 3, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 17, 2022. The case was assigned to me on August 11, 2023. A Notice of Hearing was issued on November 8, 2023, scheduling the hearing on December 7, 2023. The hearing was held as scheduled, via video-conference. During the hearing, the Government offered three exhibits which were admitted as Government Exhibits (GE) 1–3. Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A-B. The transcript (Tr.) was received on December 26, 2023. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 36-year-old employee of a DOD contractor seeking a security clearance. He has worked for his current employer since August 2017. This is his first time applying for a security clearance. He has a high school diploma. He is single and lives with his girlfriend and her child. (Tr. 17; Gov 1) The names of individuals, businesses, and institutions have been changed in this decision in the interests of protecting the Applicant's privacy. More detailed information is located in the case file.

Guideline F, Financial Considerations:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 25, 2022. A subsequent security clearance background investigation revealed the following delinquent debts: a \$25,625 credit-card account that was charged off (SOR ¶ 1.a: GE 2 at 2); a \$10,862 personal loan that was charged off (SOR ¶ 1.b: GE 2 at 2); and a \$1,953 furniture store account that was charged off. (SOR ¶ 1.c: GE 2 at 3.

Applicant admits all of the allegations in the SOR. In March 2022, he realized that he needed to get his spending and debts under control so he contacted a debt relief firm. He pays the debt relief firm \$674 a month. The debt relief firm takes approximately \$120 of that amount for their expenses. They negotiate settlements with his creditors for a lesser amount. These debts are negotiated one at a time. (AE A) All three of the debts alleged in the SOR are included in the debt settlement agreement. Applicant was making minimum payments towards these debts until he was advised not to do so by the debt relief company. (Tr. 15, 21-22; AE A) The status of each debt is:

SOR ¶ 1.a: a \$25,625 charged-off credit card debt: Applicant opened this credit-card account in March 2019. He was making minimum payments on this account. He admits he incurred too many charges on this card. His last payment was September 2022. The debt relief firm advised him to stop making payments. The debt relief firm has this debt on strategic hold. They will begin to negotiate a settlement once the other two debts are resolved and settled. (Tr. 19-21; AE A at 4)

SOR ¶ 1.b: a \$10,862 charged-off personal loan: This was a personal loan primarily for medical expenses. Applicant had either no or insufficient medical insurance. He had to take out a loan to pay medical expenses. He also used part of the loan as moving expenses when he moved in with his grandfather. The debt relief firm is in the process of a structured settlement with the creditor. They have negotiated the debt down to \$5,432. Six of 25 payments have been made towards the settlement of the account as of the date of the hearing. (Tr. 23-25, 30; AE A at 6)

SOR ¶ 1.c: a \$1,953 charged-off furniture store account: Applicant purchased a couch in March 2021. His last payment was August 2021. The debt relief firm has this debt in negotiations. They have proposed a negotiated the balance of \$1,381. (Tr. 26-27; AE A at 4)

The debt relief firm advised Applicant it will take between one to two years after the last negotiation to resolve these debts. On June 6, 2023, he settled and resolved a \$3,171 debt for \$1,745. The debt was included in his repayment plan with the debt relief firm, but it was not alleged in the SOR. (Tr. 29, 32; AE A at 6)

Applicant's November 2022 and December 2023 credit reports indicate that he resolved several additional delinquent debts that are not alleged in the SOR. (GE 2 at 3; GE 3 6-7) His December 2023 credit report indicates he paid and closed several accounts that were not delinquent. (GE 3) Applicant testified that he makes sure he does not make unnecessary purchases. He only has one open credit-card account with a \$300 limit that he uses for emergency purchases. He has no other delinquent accounts. (Tr. 29-30)

Applicant developed and follows a budget. During the hearing, he disclosed he earns approximately \$72,000 annually. His total net monthly income is \$3,784. His girlfriend works and pays half the rent and utilities. He estimates that he has between \$150 to \$300 left over after he pays monthly expenses. His monthly expenses include his monthly payment to the debt relief firm. He is current on federal and state taxes. He apologized for his financial issues. He is working hard to resolve them. (Tr. 18-19, 28, 31; AE B)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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 access for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

At the time the SOR was issued, Applicant's had three delinquent accounts that were charged off. AG ¶¶ 19(a) and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

(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; and

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

AG ¶ 20(a) does not apply because Applicant recently incurred a significant amount of debt that is in the process of being resolved. However, he is given credit for taking the initiative to begin resolving his delinquent accounts in March 2022 when he contacted the debt relief firm.

AG ¶ 20(b) partially applies with respect to the debt alleged in SOR ¶ 1.b. Applicant took out the \$10,862 loan, in part, to pay medical expenses related to his

chronic medical condition. His medical issues were a circumstance beyond his control. This mitigating condition is given less weight because of the other delinquent debts that he incurred. He admits to letting his financial situation get out of control.

AG ¶ 20(d) applies. Applicant realized he needed to get control of his financial situation. He hired the debt relief firm in March 2022 before the SOR was issued. He has been making timely payments to them. The debt relief firm is negotiating settlements and the debts are being resolved. Applicant is making a good-faith effort to resolve his delinquent student loan accounts.

Applicant mitigated the security concerns raised under Financial Considerations.

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 the circumstances. The administrative judge should consider the nine timely 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 considered Applicant has worked for the same defense contractor since 2017. I also considered that Applicant took the initiative to resolve his financial situation. He entered into a debt settlement agreement with the debt relief firm in March 2022 prior to the SOR being issued. All three SOR debts are included in the agreement. He is in the process of paying on the settlement for the debt alleged in SOR ¶ 1.b. He resolved another debt that was included in the debt settlement agreement but was not alleged in the SOR. He is making timely payments to the debt relief agency. They are negotiating settlements for the remaining SOR debts in a methodical and reasonable manner. Applicant also closed out several credit card accounts. He has only one open credit card with a low maximum balance that he uses for emergencies. He is making a good-faith effort to resolve his delinquent accounts. He proved that he is reliable and trustworthy. Security concerns under financial considerations are mitigated.

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.c:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge