



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



In the matter of:)
)
) ISCR Case No. 23-00359
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Daniel P. Meyer, Esq.

03/19/2024

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 March 17, 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 April 3, 2023, and requested a hearing before an administrative judge. The case was assigned to me on November 7, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on November 16, 2023, scheduling the matter for a video conference hearing on December 6, 2023.

I convened the hearing as scheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 3 without objection. Applicant testified and submitted Applicant Exhibits (AE) A and B. I admitted AE A in evidence without objection. I overruled

Department Counsel's objection to AE B and admitted it in evidence. At Applicant's request, I kept the record open until January 3, 2024, to enable him to submit additional documentation. He timely submitted documents, which I marked collectively as AE C and admitted without objection. DOHA received the hearing transcript (Tr.) on December 18, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. He is 58 years old. He was previously married four times: he married in 1983 and divorced in 1990; he remarried in 1994 and divorced in 2005; he remarried in 2005 and divorced in 2012; and he remarried in 2011 and divorced in 2021. He married his fourth spouse, a native-born citizen of Kyrgyzstan, in Kyrgyzstan. He has six children, ages 39, 36, 33, 28, 24, and 11; his 11-year-old was born from his most recent marriage. He has resided overseas, in an apartment provided by his employer, since approximately October 2016. (Tr. 18-19, 31-32, 34, 36, 39; GE 1; AE A)

Applicant earned an associate degree. He has worked for various defense contractors since approximately March 2001, to include at overseas locations beginning in March 2008. He has worked overseas as a team lead for his current employer since December 2019. He was granted a security clearance in approximately 2010. (Tr. 5, 18; GE 1; AE A)

The SOR alleged Applicant had nine delinquent consumer debts totaling \$40,224. (SOR ¶¶ 1.a-i) The SOR allegations are established by his admissions in his Answer; his May 2022 security clearance application (SCA); his October 2022 interview with an authorized DoD background investigator; and a June 2022 credit bureau report (CBR). (GE 1-3)

Applicant attributes his delinquent debts to minimal income, his ex-spouse's mismanagement of their finances, and his divorce. Applicant was the primary breadwinner during his last marriage. Shortly after marrying his last spouse, he borrowed \$30,000 from his 401(k)-retirement savings plan to pay for ear surgery she required to treat a hearing impairment. He also paid to sponsor her move from Kyrgyzstan to the United States. When their child was born, he borrowed \$15,000 from his 401(k)-retirement savings plan to purchase a family car, essentially depleting his 401(k). (Tr. 22-25, 27, 30-35, 37-40, 42, 75-76; GE 1-2; AE A-C)

In around 2015 or 2016, Applicant started a food truck business. His ex-spouse was the cook and it was a way for her to earn money. He incurred debt to do so because she could not obtain credit since she was not yet a U.S. citizen. The business did not do well, as they made only enough to pay the minimal amount due on their expenses, and they shut it down in 2017. They were struggling financially, so he elected to work overseas because it offered him the opportunity to earn a per diem in addition to a salary, which he intended to use to resolve his debts. He understood the debts were in his name, but he relied on her, from 2017 to 2019, to pay them since his money was deposited into their joint bank account and she was managing their finances. He did not have his mail

forwarded to his overseas address and he had limited access to his accounts due to his employer's restrictions on the websites he could access while working overseas. (Tr. 22-25, 27, 30-35, 37-40, 42, 44-61, 72, 76-82; GE 1-2; AE A-C)

In 2019, Applicant's employer ceased paying his per diem and his child was diagnosed with dyslexia. He obtained a loan to pay for his child's special education school, from 2018 to 2021, at a cost of \$900 monthly. He also incurred expenses for his then-spouse and child to relocate to a city closer to his child's school. He began to learn of his delinquent debts in 2020, through the security clearance process, and he attempted to reach his creditors. His efforts were thwarted by his inability to access their websites, due to his employer's restrictions. He spoke with a debt consolidation company who advised him to wait for his debts to fall off his CBR rather than initiating payments to resolve them. He elected to follow the company's advice. (Tr. 19-20, 22-25, 27, 30-35, 37-40, 42, 50, 54-57, 61, 65-68, 72-82; GE 1-2; AE A-C)

When Applicant and his ex-spouse divorced in 2021, he was ordered to pay \$1,000 in child support, via wage garnishment beginning February 2022; he was assigned responsibility for the debts from the marriage because they were incurred in his name; and he continued to financially support his ex-spouse until she remarried in 2022. He stated that he disputed the debt in SOR ¶ 1.d in July 2022 because he was not credited for payments he made. He also paid an auto loan not alleged in the SOR, through monthly payments of \$345, in October 2022. He stated that when he attempted to dispute some of his other debts, for the same reason he disputed SOR ¶ 1.d, the debts had already fallen off his CBR. He stated that the SOR debts are no longer reported on his CBRs, and he provided excerpts of CBRs from November 2023 as well as CBRs from December 2023 to corroborate his claim. (Tr. 19-20, 22-25, 27, 30-35, 37-40, 42, 50, 54-57, 61, 65-68, 72-82; GE 1-2; AE A-C)

SOR ¶ 1.a is a \$11,643 charged-off loan that Applicant obtained to pay for his 11-year-old's dental expenses. He stated that he paid this debt for approximately one year, and then he chose to follow the advice given to him by the debt consolidation company and let it fall off his CBR. (Tr. 19-21, 33, 35-37, 62-66; GE 1-3)

SOR ¶ 1.b is a loan in collection for \$10,180. Applicant obtained this loan to use as a down payment for a pickup truck and to purchase equipment for his food truck. He let this debt fall off his CBR. (Tr. 21-22, 62-63, 66-68; GE 1-3)

SOR ¶ 1.c is a \$8,980 charged-off loan. Applicant obtained this loan to purchase the trailer that he turned into a food truck. He let this debt fall off his CBR. (Tr. 22-23, 68-69; GE 2-3)

SOR ¶ 1.d is a loan in collection for \$4,267. Applicant obtained this loan to purchase a high-end stove for his food truck. He stated that he made monthly payments of \$225 until approximately 2017, when he could no longer afford to do so. He also stated that he settled this debt for \$2,794, which he arranged to pay at \$200 monthly through automatic deductions from his bank account. He stated that he contacted the creditor through Credit Karma and disputed this debt in July 2022 when he realized that he was

not credited for payments he made to this account. He stated that the debt dropped off his CBR at the same time he received notification that his dispute was finalized. He did not provide documentation to corroborate his payments or dispute. (Tr. 23, 38-40, 69-71; GE 1-3)

SOR ¶¶ 1.e and 1.f are debts in collection with the same company, for \$2,794 and \$1,011, respectively. Applicant believed both debts were loans he obtained to purchase equipment for his food truck. He stated that he paid them for an unspecified period and then he let them fall off his CBR. (Tr. 25-26, 71; GE 1-3)

SOR ¶ 1.g is a \$673 charged-off credit card. Applicant used this credit card for his food-truck-related expenses. He made payments on the card until he stopped receiving per diem in 2019. He let this debt fall off his CBR. (Tr. 26-27, 71; GE 2-3)

SOR ¶ 1.h is a cash loan in collection for \$560. Applicant obtained this loan in approximately 2016 to pay for food-truck-related expenses and his child's birthday gift. He stated that this debt is no longer reported on his CBR. (Tr. 27, 71-72; GE 2-3)

SOR ¶ 1.i is a \$116 charged-off electric bill. Applicant forgot to pay this debt. He stated that the debt is no longer reported on his CBR but he intends to contact the creditor to pay it if it is still outstanding. (Tr. 27, 72; GE 2-3)

In 2017, Applicant earned approximately \$45,000 annually before he started working overseas. Between 2017 and 2019, he earned approximately \$75,000 to \$80,000 with per diem, and he earned \$45,000 annually in 2019 without per diem. As of the date of the hearing, he earned approximately \$40,000 annually, or \$3,200 monthly. He expected to begin earning \$505 weekly in per diem beginning January 2024. He provided a monthly budget, which reflects a monthly net remainder of \$1,000. His housing expenses are paid by his employer and he does not have any expenses related to his home address in the United States, which is with his mother. Since 2022, he has paid \$450 monthly for online special education classes for his child. His assets totaled approximately \$32,000, which included \$8000 in savings, a car valued at \$12,000, and a trailer valued at \$12,000. He is saving money to buy a home for him and his child. He has not incurred any new delinquent debts. He utilizes Credit Karma to monitor his credit but he has not received credit counseling. He intends to maintain control over his finances. (Tr. 28-30, 32-33, 37-50, 75-78, 82; GE 2; AE A-C)

Applicant provided numerous letters of support from a former supervisor, longtime colleagues, some of whom he previously supervised, and friends. Aware of Applicant's financial delinquencies, all these individuals attested to his judgment, reliability, and trustworthiness. Appellant's former supervisor noted that Appellant earned at least two achievement awards between 2007 and 2010. Appellant's performance was favorably rated from January 2023 to December 2023. (Tr. 43; AE A, C)

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of not paying his debts. He has also chosen to allow his debts to fall off his CBRs, despite his ability to pay them. AG ¶¶ 19(c), 19(b), 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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. Applicant has chosen to allow his debts to fall off his CBRs, despite his ability to pay them. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor, and the fact that some debts have dropped off an applicant's credit report is not meaningful evidence of debt resolution. See, e.g, ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001); ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016). In addition, Applicant did not provide documentation to corroborate any of his claims of payment or dispute. 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), 20(d), and 20(e) do not 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.i:	Against 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