



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



In the matter of:)	
)	
)	ISCR Case No. 23-01572
)	
Applicant for Security Clearance)	

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2024

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 August 11, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DoD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on October 6, 2023, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on November 9, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the

security concerns. Applicant received the FORM on December 19, 2023. He responded on January 2, 2024 (FORM Response). The case was assigned to me on March 6, 2024. The Government's documents identified as Items 1 through 9 and Applicant's FORM Response are admitted in evidence without objection.

Findings of Fact

Applicant denied both SOR allegations in his Answer. He is 39 years old. He has cohabitated with his fiancée since approximately 2021. The record does not contain information about the number of children he has, reflecting only that he pays daycare tuition monthly. He attended a university from September 2004 to September 2008, a community college from January 2009 to May 2010, and another university from August 2010 to the date of his August 2022 security clearance application (SCA). He earned an associate degree in May 2010. He has worked for various defense contractors since October 2009, and he has also been self-employed since April 2019. He was first granted a security clearance in 2015. (Items 3, 6)

The SOR alleged Applicant had two delinquent student loans with the same student loan servicer (SERVICER A), charged off in the amounts of \$88,027 and \$68,645, respectively. (SOR ¶¶ 1.a-1.b) The SOR allegations are established by credit bureau reports (CBRs) from January 2015, May 2019, January 2022, and February 2023. (Items 4-5, 7-8)

The 2015 CBR reflects Applicant had 16 student loans. He obtained five student loans with another student loan servicer (SERVICER B) in 2005, 2006, and 2007, and these loans totaled \$20,821. He was current on these loans and payments were deferred. He obtained the two student loans alleged in SOR ¶¶ 1.a and 1.b in 2006 and 2007, respectively; the balances were \$67,028 and \$51,591; and he was current and paying these loans as agreed as of the date of the CBR. He obtained the remaining nine student loans, which totaled \$37,744, with the U.S. Department of Education (DoE) in 2009, 2010, and 2012. While he was current and paying these loans as agreed, he was also disputing them. (Item 5)

The 2019 CBR reflects he began to fall behind on seven of his 16 student loans. He was past due on the student loans in SOR ¶¶ 1.a and 1.b in the amounts of \$15,792 and \$12,697, respectively. He was also past due on the five student loans with SERVICER B. The nine DoE student loans were reported with zero balances. (Item 7)

The 2022 CBR reflects that Applicant had fallen further behind on the student loans in SOR ¶¶ 1.a and 1.b. They were charged off with past-due balances of \$23,771 and \$19,132, respectively, and contained the notation, "Dispute Resolved – Consumer Disagrees." The nine DoE student loans remained favorably reported and the five student loans with SERVICER B were no longer reported. (Item 8)

The February 2023 CBR reflects that Applicant's student loans in SOR ¶¶ 1.a and 1.b were "charged to profit and loss" with balances of \$88,027 and \$68,645, respectively. Both contained the notation, "Consumer Dispute Following Resolution." No

other delinquent student loans are reported. All other educational accounts are reported as either paid or with a zero balance, except for two active DoE student loans, which are reported as “pays as agreed” with balances of \$60,209 and \$16,161. (Item 4)

An October 2023 CBR reflects that Applicant does not have any delinquent debts and it does not report the student loans in SOR ¶¶ 1.a and 1.b. All other educational accounts are reported as either paid or with a zero balance, except for one DoE student loan, which is reported as “pays as agreed” with a balance of \$76,739. (Item 9)

Applicant provided the following comment in his SCA, in response to “Section 24 – Financial Record,” regarding his student loans:

However, I was using a company called Student Education Center (California) in 2019. They helped me get on a repayment program that I am currently on with U.S. Dept of Ed. This service ended in 2019. I am not currently utilizing or seeking any service of the sort. (Item 3)

Applicant verified the above-listed information on his SCA during his March 2023 background interview, indicating that he previously utilized a credit counseling service to prevent his student loans from becoming delinquent. He indicated that he completed payments on his student loans in 2019. When confronted about the two student loans alleged in the SOR, he maintained that he never had any such accounts, he disputed them with a credit reporting agency, and he never received a response after his dispute. He indicated that he would attempt to locate documentation concerning the payoff of his student loans. (Item 6)

In his Answer, Applicant maintained that the two student loans in SOR ¶¶ 1.a and 1.b are not his. He first learned of them during his background interview, and he subsequently electronically disputed them with the credit reporting agencies. In doing so, he stated that he noticed information on his CBRs that did not belong to him, to include a name identical to his but with a different middle initial. The 2022 CBR corroborates his claim, as it reflects under “Other Names” a name nearly identical to his except that the first name ends with a different letter and there is no middle initial listed. He provided documentation reflecting his disputes with SERVICER A from April 2023, May 2023, and June 2023 as well as with two of the three credit reporting agencies from November 2022, January 2023, and August 2023. (Items 2, 8)

In his FORM Response, Applicant stated that the two student loans in SOR ¶¶ 1.a and 1.b had been removed from his CBRs by all three credit reporting agencies. He provided a 3-Bureau CBR from December 2023, which does not report the student loans in SOR ¶¶ 1.a and 1.b. It also reflects that all other educational accounts are either paid or have a zero balance, except for one DoE student loan, which is reported as pays as agreed with a balance of \$77,488. It also reflects that Applicant does not have any delinquent debts.

Applicant indicated during his March 2023 and April 2023 background interviews that his monthly salary was approximately \$40,000 to \$42,000 and his fiancée’s was

approximately \$10,000. He indicated that his fiancée purchased a home in 2021 and he contributes to the monthly mortgage of \$3,800. His other primary debts included his monthly car payments totaling \$2,200 for two cars and daycare tuition of \$1,800 monthly. He estimated that the value of his fiancée's home was \$730,000, they had \$40,000 in their combined savings account, and he had approximately \$32,659 in a retirement account. Their joint monthly net remainder after expenses was approximately \$39,442. He indicated that he invests most of his money back into his business. (Item 6)

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(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...

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

(c) a history of not meeting financial obligations.

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

Applicant was unaware of the two student loans in SOR ¶¶ 1.a and 1.b until his 2023 background interview. Since then, he has made multiple efforts to dispute them. He continued to dispute them even after the 2022 and February 2023 CBRs reported them as valid debts after his disputes. The 2022 CBR, which contains a name nearly identical to his but not his, corroborates his claim that when he began to dispute these loans, he noticed information on his CBRs that were incurred in a name similar to his but did not belong to him.

Applicant does not have any other delinquent debts. The CBRs reflect that he brought all his other student loans in good standing and his remaining active student loan is reported on the 2023 CBR favorably. He made a good-faith effort to address the two student loans in SOR ¶¶ 1.a and 1.b by disputing them. An applicant demonstrates good faith by acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at 4 (App. Bd. Oct. 12, 1999). His finances are under control and do not cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) 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 this whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.b: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge