



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



In the matter of:)	
)	
)	ISCR Case No. 22-01759
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant provided sufficient information to mitigate the financial considerations security concerns arising from his delinquent debts and unfiled income tax returns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 5, 2022. On December 19, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant answered the SOR on January 10, 2023, and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2023.

The hearing convened on December 7, 2023. Department Counsel submitted Government Exhibits (GE) 1-7, which were admitted in evidence without objection. Applicant submitted Applicant Exhibits (AE) A-H, which were admitted without objection¹. I held the record open for two weeks after the hearing to provide Applicant with the opportunity to submit documentary evidence. He timely submitted AE I-R, which were admitted in evidence without objection.

¹ There is no Applicant’s Exhibit E.

Findings of Fact

In his answer, Applicant denied all the SOR allegations. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact.

Applicant is 35 years old. Since 2021, he has worked as a laser and robotic systems operator for a government contractor. He worked as a DoD civilian employee from 2005-2013. He was married in 2010 and divorced in 2021. He has a minor child. He earned an associate degree in 2010. (Tr. 16-19; GE 1)

Applicant testified that he and his wife were dating for about ten years before they got married. In about 2017, their marriage started falling apart, and they separated in August 2019. His wife kept their home and initially denied him access to their child. His wife had a job earning about \$25 an hour, but his employment was sporadic, and when he worked, he did not earn a lot of money. He estimated that he only earned about \$5,000 in 2017. She was paying their monthly bills and managing their joint account but was also hiding her spending. In 2016, he discovered that money was disappearing from their account and their bills were not being paid. For this reason, they had to file bankruptcy in 2016. He later found out she was cheating on him, and some of the money she was spending was in furtherance of the affair. (Tr. 19-26, 61-76; AE G, O)

From 2005-2013 Applicant earned about \$25 an hour. He left that job because of a toxic work environment. He reported that he was underemployed from about 2014-2021. During this time, he tried to salvage a family business, but he was unable to make it profitable. He also cared for his young daughter while his wife worked. His was paid about \$14 an hour in his next job in 2021. Since November 2021, he has earned about \$26 an hour with his current employer. Applicant currently pays about \$500 monthly in child support and is current on his child support obligations. (Tr. 29-61, 76-78)

In January 2023, he hired a credit repair company. The correspondence with this company cited the attorney by name that would be representing him. He testified his lawyer told him not to pay anything and let them work with the creditors to validate the debts, get the debts removed from his credit reports, or make settlement arrangements on his behalf. He has been following their directions. He stated that his financial problems were not due to his spending habits, and he will no longer have any joint accounts with anyone or cosign any debts for anyone. (Tr. 19-26; AE H, J, L, M)

The SOR alleges 11 delinquent debts totaling about \$43,000. The status of the allegations is as follows:

SOR ¶¶ 1.a and 1.b allege that Applicant failed to timely file his federal and state income tax return for 2019. He reported that when he and his wife separated, he was depressed. He was sleeping on the couch at his parent's house and did not have the emotional energy to do his taxes. He knew that he had to hire a tax professional to assist him with the legal issues involving his divorce and would have to rehash some of the circumstances that caused him distress. The record shows that he filed his 2019 income

tax return in December 2022. He filed state taxes at the same time. He did not owe any money to the IRS or the state. He timely filed his subsequent income tax returns for tax years 2020-2022 and owes no money for back taxes. (Tr. 29-61, 76-78; AE B, C, D, F, G, R; GE 2)

SOR ¶ 1.c alleges Applicant and his wife filed a Chapter 7 Bankruptcy in December 2016, with about \$200,000 in liabilities. The case was discharged in April 2017. He reported that he filed bankruptcy because his wife was secretly spending their money and not paying their bills. Once he discovered what was happening, it was too late to pursue other options to resolve their finances. (Tr. 29-61, 76-78; Answer; GE 3, 4, 5, 6, 7)

SOR ¶ 1.d alleges a wireless phone account placed for collection for \$4,954. Prior to their separation, Applicant obtained wireless phones for himself, his wife, and daughter. He reported that after they separated, his wife would not give him any of their bills, and he did not know she stopped paying the bill. He learned it had become delinquent when his phone was shut off. He thinks the amount of the debt is an error, and the credit repair agency is challenging the debt. (Tr. 29-61, 76-78; GE 5, 6, 7)

SOR ¶ 1.e alleges a personal loan that was charged off for \$3,257. He reported that he took out the loan to consolidate some debt and pay bills after his divorce. The credit repair agency is validating the debt and the amount. He asserted that he would pay it if it is valid. He is acting on the direction of the lawyer at the credit repair agency, not to make any payments until they verify his debts. (Tr. 29-61, 76-78; GE 5, 6, 7)

SOR ¶ 1.f alleges a credit card account placed for collection for \$761. Applicant reported that this debt was canceled in October 2022. He submitted the 1099-C Form he received into the record, and stated he reported it on his taxes. (Tr. 29-61, 76-78; AE N; GE 5)

SOR ¶ 1.g alleges an internet services account placed for collection for \$223. Applicant testified that he has not paid it. Post hearing, he provided a statement saying that on December 11, 2023, the creditor could not find his account or assist him in resolving it. (Tr. 29-61, 76-78; AE P; GE 5)

SOR ¶ 1.h alleges an auto lease that was charged off for \$13,610. This debt was for a vehicle leased in 2019, prior to his August 2019 separation. The monthly payment was \$611. Since his wife was their main source of income, he did not have the means to pay the lease after they separated, and the vehicle was repossessed. He provided a document from March 2020 purporting to show his early termination liability, but the numbers on it are nonsensical. It is unclear what happened to the vehicle after it was repossessed, and what amount is actually owed. He is waiting on the credit repair company to advise him on how to handle this debt. (Tr. 29-61, 76-78; AE I; GE 5, 7)

Applicant provided a monthly budget statement showing that after his regular monthly expenses he has \$721 left over. He currently has no savings and about \$4,500

in his retirement account. He reported that he lives rent free on a family property, which reduces his monthly expenses. He does not have any new delinquent debt and can afford his monthly expenses. He had credit counseling when he filed bankruptcy in 2016. He plans to get a second job to help pay any debts the credit repair company validates. He reported that he met his new fiancé in 2021, which has helped him move on with his life and improve his finances. (Tr. 61-76; AE K, Q)

Applicant submitted a character letter from his supervisor who stated that he is “in good standing with management in all regards.” (AE A)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

- (a) inability to satisfy debts; and
- (b) 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;

The financial considerations security concerns are established by the credit reports, bankruptcy records, and tax records. AG ¶¶ 19(a), 19(b), and 19(f) apply.

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;

(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; 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.

AG ¶ 20(a) applies to SOR ¶ 1.c. The reason that Applicant filed bankruptcy occurred under circumstances unlikely to recur, and no longer casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(g) applies to SOR ¶¶ 1.a and 1.b. Applicant has filed his delinquent income tax returns and has timely filed for the last three years. The tax related security concerns have been mitigated.

AG ¶¶ 20(b), 20(c), and 20(e) apply to SOR ¶¶ 1.d-1.h. Applicant's financial problems are not from irresponsibility. He and his ex-wife had an arrangement where she was the primary financial provider for their family. He had a number of years where he was underemployed, but he took care of his daughter so his wife could work. When their relationship ended, she did not provide him with financial assistance, and he did not have the means to pay for his own basic expenses or resolve debt.

After becoming gainfully employed, he hired a reputable credit repair company to represent him in restoring his credit rating and resolve outstanding debt. Some of the correspondence with this company states which attorney is representing him. He testified his lawyer told him not to pay anything and let them work with the creditors to validate the

debts, get the debts removed from his credit reports, or make settlement arrangements on his behalf. His actions in this regard are reasonable and responsible. He has been following the directions and relying on professional advice that the credit repair firm and attorney provided to help resolve his delinquent finances.

Applicant has a stable job and income and has found ways to reduce his monthly expenses. His current credit report and household budget demonstrates his finances are under control and he has the financial means to resolve debt. If necessary, he has a plan to get a second job to supplement his income to help pay any debts the credit repair company validates. These financial issues no longer cast doubt on his reliability, trustworthiness, and judgment.

Applicant provided sufficient evidence that he has undertaken good-faith efforts to address his delinquent debts through professional assistance and representation. He is not required to show that he has paid or resolved all his debts, or that he has done so in any particular way. He has shown that he has a reasonable plan to resolve his debts and has implemented it. Applicant has mitigated the financial considerations security concerns.

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 his character letter. 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 Guidelines F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility for a security clearance. I conclude that 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.h: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge