



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



In the matter of:)
)
) ISCR Case No. 22-01056
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Pro se

11/15/2023

Decision

Hyams, Ross D., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 6, 2021. On June 12, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). He responded to the SOR on July 6, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 15, 2023.

The hearing was convened as scheduled on October 4, 2023. Department Counsel submitted Government Exhibits (GE) 1-7, which were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AE) A-B, which were admitted in evidence without objection. Afterwards, I held the record open for two weeks to provide Applicant the opportunity to submit documentary evidence. He timely submitted documents that I marked as AE C-D, which were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted SOR ¶¶ 1.a-1.n with explanation, and denied SOR ¶ 1.o. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 44 years old. He married in 2008 and divorced in 2023. He has two children, one of whom is a minor. He attended college from 2014-2019 and has earned about 80 credits, but has not yet earned a degree. He served in the Navy from 1999-2003 and received an honorable discharge. He has worked for a defense contractor since 2010, and works as a test engineer. (Tr. 14-16; GE 1).

In 2018, Applicant's wife, who worked as a nurse, became addicted to prescription medication. He did not realize the extent of her drug problem until she left him at the start of the COVID-19 pandemic and started living out of her car. During their marriage, they held a joint checking account and she took responsibility for paying their bills and maintaining their day-to-day finances. He discovered before she left that she was using the money in their joint account to buy herself jewelry, trips, and other items, and at times did not make payments on their bills. He asserted that they could easily afford their monthly expenses on only one of their salaries. He stated that he still could not account for some of her spending. (Tr. 18-52; AE A, B).

After she left him, Applicant realized that his household had financial delinquencies that he needed to resolve. During this time, he was also dealing with his children who had trauma from their mother leaving and from the COVID-19 pandemic. He stated that he did the best that he could at the time. (Answer; Tr. 18-52; GE 2, 3, 4).

The SOR alleges ten student loans in collection totaling about \$52,000, a past due auto loan totaling \$9,038, and four medical debts totaling \$4,254. The status of the allegations is as follows:

SOR ¶¶ 1.a-1.j are ten student loans in collection totaling about \$52,000. After taking a break from college in 2019, Applicant had a temporary deferment on his student loans. He intended to restart school before the deferment ended. The problems with his marriage required him to take a break and focus on their relationship. He did not realize that these loans became due and delinquent prior to the start of the national COVID-19 student loan deferment. Since his wife was handling the finances, he never saw or received notice that loan payments became due. After she left him in early 2020, he did not receive communication from the lender about his student loans. (Tr. 18-52; GE 2, 3, 4, 5, 7).

In about September 2020, Applicant received notice from his facility security officer (FSO) that delinquent student loans had been found on his credit report in the continuous evaluation security process. He immediately reached out to the Department of Education (DOE) about establishing a payment plan on the loans. For two months, he called the

DOE every week and waited on hold for hours, but was unable to make contact with anyone about his account. The COVID-19 pandemic had DOE employees working from home and there was reduced staffing at government agencies who interacted with the public. (Tr. 18-52; GE 2, 3, 4, 7).

Applicant reported that his mother passed away in late 2021 and left him about \$90,000. He intended to immediately use a portion of this money to make a lump sum payment to resolve his student loans. He also considered liquidating part of his retirement account to resolve the debt. However, his divorce attorney advised him against doing either option at the time, because it would impact the divorce proceedings with his ex-wife. Once issues in that litigation were resolved, he made a lump sum payment to the DOE in 2022. He stated that he thought this payment was made prior to receiving the SOR. These student loans are resolved. (Answer, Tr. 18-52; GE 2, 3, 4, 7).

SOR ¶ 1.k is a past due auto loan with a balance of \$9,038. This loan was for Applicant's ex-wife's car. After she left him, she was living in the car. Since she was handling her car payments all along, this loan went unpaid. The lender eventually repossessed the vehicle, and it was sold at auction. The lender used the proceeds from the sale to settle the balance and sent Applicant a check for \$3,643, which were the remaining proceeds from the sale. He provided supporting documentation with his Answer. The account number on the check matches a significant portion of the account number on the credit report. While this debt still appears on his credit report, it is in error. This debt is resolved. (Answer, Tr. 18-52; GE 2, 3, 4, 7).

SOR ¶¶ 1.l-1.m are medical debts in collection for \$4,125. Applicant reported that he was unsure of the origin of these debts. He asserted that they had health insurance and that he never saw any medical bills. He provided documentation with his Answer showing that he paid these medical debts in June 2022. These debts are resolved. (Answer, Tr. 18-52; GE 2, 3, 4, 7).

SOR ¶ 1.n is a medical debt in collection for \$92. Applicant reported that he was unsure of the origin of this debt. He asserted that they had health insurance and that he never saw any medical bills. He stated that this debt was paid in June 2022, and he requested a receipt from the creditor. This debt is resolved. (Answer, Tr. 18-52; GE 2, 3, 4, 7; AE C).

SOR ¶ 1.o is a medical debt in collection for \$37. Applicant reported that he was unsure of the origin of this debt. He asserted that they had health insurance and that he never saw any medical bills. He reported that he would be glad to pay this debt but was unable to locate the creditor from the information on his credit report. (Answer, Tr. 18-52; GE 2, 3, 4, 7).

Applicant has a savings account with about \$7,500, retirement accounts with about \$125,000, and college funds for his children totaling about \$60,000. There are no other delinquent debts on his recent credit report. He stated that he uses a budget and has a plan for ensuring that he spends within his means each month. His budget shows that he

has enough income to pay his monthly expenses and have over \$1,000 remaining monthly. (Tr. 18-52; AE D)

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.

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.

The SOR allegations are established by the credit reports and Applicant’s admissions. AG ¶¶ 19(a) and 19(c) 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; and

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

Applicant has resolved all of the debts except ¶ 1.o. This debt is a \$37 medical debt in which the creditor cannot be determined, and it does not present a security concern. The evidence and testimony in this case clearly demonstrate that the financial consideration security concerns occurred under circumstances unlikely to recur, and does not cast doubt on Applicant's current reliability, trustworthiness, and judgment. He provided sufficient evidence to show that he has acted responsibly and has undertaken good-faith efforts to repay his creditors and resolve his debts. AG ¶¶ 20(a), 20(b), and 20(d) 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 considered his military service, and his service to the government working for a defense contractor. I have incorporated my comments under Guideline F in my whole-person analysis.

I had the chance to observe Applicant's demeanor and assess his credibility. The information he provided was thorough, he adequately explained the circumstances surrounding the SOR allegations, and I found his testimony and explanations to be credible and substantially corroborated by documentary evidence.

Overall, the record evidence leaves me without questions or doubts as to 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.o:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

Ross D. Hyams
Administrative Judge