



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



In the matter of:)
)
) ISCR Case No. 21-00256
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Pro se

08/08/2023

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 April 20, 2020. On August 10, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline J (criminal conduct). He responded to the SOR on January 19, 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 February 2, 2023.

The hearing was convened as scheduled on June 12, 2023. Department Counsel submitted Government Exhibits (GE) 1-7, which were admitted in evidence without objection. Applicant did not submit any documentation at the hearing. 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 Applicant Exhibits (AE) A-H, which were admitted in evidence without objection.

Amendment to the SOR

At the end of the hearing, Department Counsel moved to amend the SOR to remove the Guideline J allegation. The amendment was granted without objection. (Tr. 51)

Findings of Fact

In his answer, Applicant admitted SOR ¶¶ 1.a-1.c, with explanation. 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 33 years old. He married in 2009, and divorced in 2014. He has two minor children with his ex-wife. He has a third minor child with another former partner. He completed some college courses, but did not earn a degree. He served in the Navy from 2007-2015, and received an honorable discharge. He held a security clearance while in the Navy. He has worked for his current employer for three and a half years, as an avionics technician. (Tr. 14-17; GE 1).

Applicant started paying child support in 2014, after his divorce. He did not have an attorney represent him in the child support proceedings, and he was assessed with a monthly amount of \$2,600. He reported that this amount was not sustainable, as it was almost his entire monthly paycheck while in the Navy. He stated that he initially used his credit cards to help meet some of his expenses, but he quickly became unable to pay the full amount of child support and meet his living expenses. He accumulated arrears for the support since he was unable to make full monthly payments. In 2015, the monthly support amount was reduced to \$1,700. (Tr. 18-21, 27-32)

His current monthly child support obligation is \$1,400 for two of his children. In 2022, his ex-wife asked the state child support agency to waive his arrears from the 2014-2015 time period. For his third child, Applicant pays some money directly to his former partner, and \$80 is automatically withheld bi-weekly by the state child support agency. The record shows that he is current with all his child support obligations. (Tr. 18-21, 27-32; AE A, D)

Applicant reported that he has had financial strains over the last year and a half, which have interfered with his ability to repay delinquent debt. He and his current partner purchased a house in 2021, which required numerous unexpected repairs, including the foundation, roof, water heater, well pump, and water filtration system. He reported that in this time period, his car was destroyed by a mechanic who made shoddy repairs, and that he had to pay car rental and replacement costs. He also had back surgery and was out of work for three months on short term disability, where he only received a portion of his regular salary. (Tr. 21-22, 33-39, 45-49)

The SOR alleges delinquent debts totaling about \$32,581, including \$29,757 in child support arrearages. The status of the allegations is as follows:

SOR ¶ 1.a is a debt for child support arrears to State A totaling \$29,757. Applicant's child support account records with State A do not show any outstanding balance for arrears. The arrears have been resolved and Applicant is maintaining his monthly support obligations. (Tr. 18-21, 27-32; Answer; GE 5, 6; AE A, D, E, F)

SOR ¶ 1.b is a credit card that was charged off for \$2,476. Applicant stated that he was unable to repay this debt due to the financial strain of the last one and a half years. He reported that he contacted the creditor to resolve the debt, and the creditor wanted a lump sum payment to resolve the debt, which he was unable to make. He claimed that he was told that if he wanted to make gradual payments, they would report it negatively to the credit reporting agencies. He provided documentation showing that after the hearing, he set up an automatic payment arrangement through his bank, and made at least one \$100 payment to the creditor. (Tr. 21-22, 33-39, 45-49; Answer; GE 5, 6; AE A, G)

SOR ¶ 1.c is a medical debt placed for collection for \$348. Applicant stated that he was unaware of the debt before receiving the SOR. He claimed that this debt was paid in full and provided a payment confirmation number. This debt is now resolved. (Tr. 22-23, 26-27; Answer; GE 5, 6).

Applicant reported that he has a monthly budget and provided a personal financial statement. The statement shows that he has about \$972 leftover after he pays his regular monthly expenses. He also recently started receiving disability benefits from his military service. He provided documentation showing that he has a payment plan established to pay a small medical debt from his recent surgery. (Tr. 43-44; AE B, H)

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 (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's child support obligations are being paid and he has resolved the arrears. He acted in a reliable and trustworthy manner to adjust his child support obligation and to resolve the arrears. He has taken appropriate action on the other two debts alleged in the SOR by making payments on his charged-off credit card debt, and by resolving the medical debt. He has also made arrangements to pay a recent delinquent debt that was not alleged in the SOR. The security concerning behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment. He provided sufficient evidence to show that he has undertaken good-faith efforts to repay his creditors and resolve his debts. Applicant is not required to show that he has paid or resolved all of his debts, or that he has done so in any particular way. He has a reasonable plan to resolve his remaining delinquent debt and has implemented it. AG ¶¶ 20(a), (b), and (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. I have incorporated my comments under Guideline F in my whole-person analysis.

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.c:	For Applicant
Paragraph 2, Guideline J:	Withdrawn

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