



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



In the matter of:)	
)	
)	ISCR Case No. 23-01899
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On September 14, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 1, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on January 30, 2024. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 8. (Item 1 is the SOR) Applicant provided two responses to the FORM and submitted documents that are marked as Applicant's Exhibits (AE) A through M. There were no objections to any evidence offered and it is admitted. Correspondence and other administrative matters were marked as Hearing Exhibits (HE) I through V. The case was assigned to me on April 30, 2024.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. His admissions are incorporated into the findings of facts. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 57 years old. He earned a bachelor's degree in 2012. He has been employed by a federal contractor since October 2020. He served in the military from 1990 to 2010 in an inactive reserve status and was honorably discharged. He has been married since 1991. He has four adult children and a child who passed away. In the past, he was granted security clearance eligibility in 2009, 2018 and again in 2022. (Item 2)

The SOR alleged five delinquent debts totaling approximately \$79,320. In Applicant's response to the SOR he admitted the debts in ¶¶ 1.a and 1.e. However, Applicant is an authorized user on the debt alleged in SOR ¶ 1.a (\$29,600) and therefore he is not ultimately responsible for the debt. Regarding the judgment in SOR ¶ 1.e (\$6,303), he admitted there is a debt, but he is disputing it with the state employment authority and requesting a waiver of payment. It is for an overpayment of benefits. The debts are supported by Applicant's admissions and credit reports from August 2021, May 2023, and January 2024, along with court documents. (Items 2, 3, 4, 5, 6, 7, 8)

In Applicant's answer to the SOR, he explained the circumstances that caused him to have financial problems. In late 2019, while working at a government site, he began to experience physical reactions to a chemical that was being used in the processing of military equipment. He missed days of work and requested to be moved to another project. He had worked on this project for five years. He said that despite providing his employer with medical documents, he was released from employment in August 2019. He received unemployment benefits for about four months. His request for benefits from his employer was denied, and he appealed the decision, which was heard by an administrative judge. He lost his appeal. (Item 2; AE B)

During this time, Applicant suffered severe emotional distress when his best friend of 40 years died suddenly, and six months later his eldest child passed away from ovarian cancer. Then his father, three cousins, an uncle, a brother-in-law, and good friends also passed away during the next three years. Three passed away from the COVID-19 virus. He attributed the pandemic to having an emotional and financial impact on him. He was able to find temporary work after he was released from his previous job. He used his credit cards and savings to supplement his income. He had insurance to help cover the accounts in SOR ¶¶ 1.b, 1.c, and 1.d for six months. However, the pandemic was in full-

swing at that time and the temporary work and hours were sporadic. He said he was not reckless but used the credit cards out of necessity. (Item 2, AE B)

Applicant stated in his SOR answer that he sought counseling and spiritual guidance to help him with his grief. His employment became steadier, and by October 2022, he was catching up on his bills. That month, the pipes upstairs in his house burst while he was at work and flooded the house for hours. His house was destroyed. He and his wife stayed with their daughter until they could find a place to live, which they did. All of their household goods were destroyed, including their furniture and bed. His resources were again depleted, and his insurance company was unresponsive. He reported the company to the state inspector general and months later they received reimbursement from the insurance company, but it was a fraction of what was claimed. Applicant stated that they have slowly been rebuilding their finances while putting together a new home. His work has been steady allowing him to stabilize his finances. (Item 2)

Applicant stated that he reached out to the creditors in the SOR (except ¶ 1.e) and has been offered settlement agreements. In his response to the FORM, he provided proof that he completed a three-month payment plan and resolved the debt in SOR ¶ 1.a. While, as an authorized user he was not required to pay this debt, he resolved it because it belonged to his wife. He also paid the debt in SOR ¶ 1.d. He provided documentary proof that both debts are resolved. (Item 2; AE A, B, C, D, E, F, J, K)

The creditor in SOR ¶¶ 1.b and 1.c is the same. The creditor offered him a monthly settlement agreement, but the terms were more than he could afford at the time while he was paying the debt in SOR ¶ 1.a. Now that the debts in SOR ¶¶ 1.a and 1.d are resolved, he intends to use these resources to repay the remaining debts. He intends to pay \$1,400 monthly to resolve them. He provided copies of proposed settlement agreements for a reduced amount from the creditors, but the agreement offers have expired. Presumably he will attempt to renegotiate new terms. (Item 2; AE G, H, I)

Applicant provided documents to show that he is disputing the debt in SOR ¶ 1.e and has requested a waiver from the state office. He is waiting for a response. He is actively attempting to resolve this debt. He provided supporting documents. (Item 2; AE L, M)

Applicant stated repeatedly throughout his SOR answer and response to the FORM that he is a loyal American and takes his security responsibilities seriously. He has faithfully executed his duties in the past while holding a security clearance and has never had any discrepancies. He said even though the financial events were out of his control, he is ashamed for being in this predicament and pledged to resolve the remaining debts within the next 18-24 months. He considers himself an honest man who was overwhelmed by death, grief, and negative events. During this difficult period and the loss of his daughter, they learned that his wife and two daughters carry the same cancer gene and all three were required to undergo hysterectomies. He and his wife have been tested both physically and spiritually over the past few years but are in a better place now. He is

determined to pay the remaining debts as fast as possible. He stated his finances are now stable and he is able to satisfy his current obligations. (AE B)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that he was unable to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 attributed his financial problems to losing his job due to a medical issue; unemployment for a period; underemployment during the pandemic; the loss of numerous family members including his daughter; the medical procedures his wife and two other daughters were required to undergo; the loss of his father and other family and friends; and a house flood with a subsequent claim underpayment. These were conditions beyond his control. Applicant has settled two of the SOR debts, including the largest one. (SOR ¶¶ 1.a and 1.d). He now intends to use his resources towards paying the remaining debts in SOR ¶¶ 1.b and 1.c and has a plan, which he hopes to complete in 18 to 24 months. I find Applicant acted responsibly under the circumstances. AG ¶ 20(b) applies. I find AG ¶ 20(d) applies to the two paid debts. Although there is no evidence that he has received financial counseling, there are clear indications his finances are under control. AG ¶ 20(c) partially applies.

Applicant's financial issues occurred under circumstances that are unlikely to recur. The pandemic had a personal and financial impact on him. I find his difficulties do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant disputed the debt in SOR ¶ 1.e. He provided sufficient documentation that he is addressing the debt with the creditor and attempting to resolve it by having the amount owed waived. He has not ignored the debt. Although AG ¶ 20(e) does not perfectly apply, I believe he is pursuing a resolution for this debt and is committed to resolving all his financial issues.

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 the 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.

Applicant does not present a perfect case in mitigation, but perfection is not required. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant still has debts to resolve, but I believe he is honest and sincere in his intentions to address his debts. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan by resolving two debts, including the largest one. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. It may take time, but I am convinced he will eventually resolve his financial problems.

Applicant met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns raised under Guideline F, financial considerations.

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.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge