



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



In the matter of:)	
)	
)	ISCR Case No. 23-01861
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2024

Decision

COACHER, Robert E., Administrative Judge:

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

History of the Case

On August 24, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The Department of Defense (DOD) acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on December 4, 2023, and requested a hearing before an administrative judge. His answer had attached to it exhibits, which will be referred to as SOR Ex. A-P. Department Counsel had no objection to my consideration of SOR Ex. A-P. I was assigned the case on May 2, 2024. The Defense Office of Hearings

and Appeals (DOHA) issued a notice of hearing on June 16, 2024, and the hearing was convened as scheduled on July 11, 2024, using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list and its discovery letter sent to Applicant were marked as HE I and II. Applicant testified and offered exhibits (AE) A-C, which were admitted without objection. The record was held open to allow Applicant to submit additional evidence, which he did in the form of AE D-E. Both were admitted without objections. DOHA received the hearing transcript (Tr.) on July 22, 2024.

Procedural Issue

Department Counsel moved to withdraw SOR allegations ¶¶ 1.g and 1.f. Without objection, the motion was granted. My Formal Findings will reflect that those two allegations were withdrawn.

Findings of Fact

Applicant admitted the SOR allegations, with explanations. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 51-year-old employee of a federal contractor. He has worked for his current employer as a network engineer since 2017. He has worked for other federal contractors since 2007, including serving in Afghanistan. He served in the U.S. Army on active duty from January 1996 to October 2006. He served on two military deployments to Iraq. He received an honorable discharge from the Army. He receives monthly disability payments from the Department of Veterans Affairs (VA) in the amount of \$1,600 for a disability rating of 60 percent, which was recently raised from 20 percent. He is married for the third time (1995-2005; 2005-2019; 2021-present). He has three children, ages 19, 13, and 10, all from his second marriage. He holds a bachelor's degree. (Tr. 6-7, 37-41; GE 1)

The SOR alleged that Applicant had six delinquent debts totaling approximately \$21,423. (SOR ¶¶ 1.a-1.f) The delinquent debts are established by the Government's credit reports and Applicant's SOR admissions. (GE 3-5; SOR answer)

Applicant explained that his financial difficulties were the result of a contentious divorce from his second wife (W2). During their marriage, W2 did not work outside the home. Applicant was working in Afghanistan from 2007 to 2009. Because of these circumstances, he allowed W2 to open credit cards in his name because she did not have her own credit standing. He also bought her a car using his credit. The car was a 2013 Hyundai. (Tr. 54, 60-61; AE 2)

Applicant and W2 entered into a divorce agreement signed by the judge on June 25, 2019. Under the terms of the agreement, W2 (the Respondent) was awarded, *inter alia*, the 2013 Hyundai car, along with the debt associated with it. They were each responsible for "debts in possession" and "debts associated with property awarded to

each.” The debts in possession were not specifically identified in the agreement. Applicant claimed that he and W2 had a verbal agreement concerning some of the debts that W2 had incurred during the marriage. That agreement was for W2 to pay those debts, which she agreed to do, according to Applicant. When she failed to pay those debts, Applicant contacted the creditors in an attempt to resolve them. He did this partly because the delinquent debts were impacting his ability to continue holding a security clearance. He stated that the main reason he wanted to resolve these debts was to be able to help his family. (Tr. 63, 66; SOR answer; SOR Ex. C)

The status of Applicant’s delinquent debts is as follows:

SOR ¶ 1.a-\$9,292. Applicant and W2 bought a water-softener system for their home in about 2016. He was away when the salesman talked to W2. She signed the contract to purchase the system. He agreed to the purchase after he was told about it. Payments continued up through the divorce. During their divorce negotiations, Applicant claimed that W2 agreed to pay this debt. She failed to do so. He decided to pay the debt and entered into a settlement with the creditor in January 2024. He made his final payment under the settlement plan in February 2024, as documented by the creditor’s July 9, 2024 letter. This debt is resolved. (Tr. 42-45; AE A)

SOR ¶ 1.b-\$4,256. Applicant contracted for this credit card in approximately 2000 to use for travel purposes. During the divorce negotiations with W2, she told him she wanted to keep this credit card for her use after the divorce and she would be responsible for paying it. There was no written agreement concerning this promise by W2. She failed to make payments. When Applicant realized she was not going to make the payments, he reached out to the creditor and secured a settlement. He did this before the issuance of the SOR in August 2023. He made his settlement payment in November 2023. This debt is resolved. (Tr. 51-53; SOR Ex. E)

SOR ¶ 1.c-\$3,910. This debt was from the loan Applicant secured to buy a car for W2 in 2015. The car was the 2013 Hyundai discussed above, which W2 was awarded in the divorce, and for which she was financially responsible per the divorce settlement. W2 ultimately wrecked the car before paying the loan. Applicant has had difficulty getting this debt removed from his credit reports but he is still pursuing that action. This debt is mitigated. (Tr. 54-56; SOR Ex. C)

SOR ¶ 1.d-\$1,981. This credit card was used to purchase wheels and tires for W2’s car referred to above. The divorce settlement made this debt W2’s responsibility, but when she failed to pay it and it remained on his credit report, Applicant contacted the creditor and reached a settlement. He made his first payment of approximately \$242 in August 2024, and he will continue making payments until the debt is resolved. This debt is being resolved. (Tr. 57-58; SOR answer; AE E)

SOR ¶¶ 1.e-\$1,515; 1.f-\$469. Both these debts relate to a joint account Applicant and W2 had at a credit union. Before the divorce, Applicant had directed that his employment payments be direct deposited here. During the divorce, he stopped his direct deposit there and stopped using this credit union. W2 did not stop using it and secured a

loan that she failed to pay and incurred an overdraft charge. During the divorce negotiations with W2, she told him she would be responsible for paying these debts. There was no written agreement concerning this promise by W2. She failed to make payments. When Applicant realized she was not going to make the payments, he reached out to the creditor and was told the debts were written off. The credit union has not pursued legal action against Applicant for the debts. Applicant intends to reach a settlement with whatever collection service now holds the debts. These debts are currently unresolved. (Tr. 59-63; SOR answer)

Applicant's monthly income, from all sources, is approximately \$10,200, and his monthly expenses are approximately \$8,700, leaving a monthly remainder of \$1,500 to address his remaining debts. A recent credit report shows that he has no other delinquent debts, other than the SOR debts related to his divorce. (AE B, D)

Applicant presented character statements from four current or former coworkers and two relatives, his sister and his current wife. All these people stated that Applicant is trustworthy and reliable. (SOR Ex. J-O)

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 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that were unpaid or unresolved. The above disqualifying conditions are raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(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 faced circumstances beyond his control when he divorced from W2 in 2019. All the SOR debts were related to their marriage and in many cases were incurred for the benefit of W2 even though Applicant was legally responsible for them. He acted responsibly when he relied on a verbal agreement, during the divorce proceedings, by W2 to pay the debts. When he realized that W2 was not going to honor the agreement she made, he contacted the creditors to resolve the debts. Could he have responded in a more timely manner? Yes, however, perfection is not required. His efforts to pay or settle all but two of the debts was reasonable under the circumstances. He certainly had reason to rely on W2's agreement to pay the debts and dispute the attribution of the car debt and the wheels and tire debt to him, since the divorce settlement specifically referred to those items as being W2's responsibility. I determine his promise to address the remaining credit union debts reliable, given that he has established payment actions on the other SOR debts. All three mitigating conditions substantially 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 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. I considered Applicant's military service, including his deployments and his contractor service in a hostile area. I also favorably considered all of his character evidence. While Applicant could have been timelier in resolving his debts, he has made great strides in their resolution and credibly stated that he will resolve the remaining debts.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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.f:	For Applicant
Subparagraphs: 1.g-1.h:	Withdrawn

Conclusion

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

Robert E. Coacher
Administrative Judge